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FCC Record

A comprehensive compilation of decisions, reports, public notices and other documents of the Federal Communications Commission of the United States.

FEDERAL COMMUNICATIONS COMMISSION

Dennis R. Patrick, Chairman

James H. Quello

Patricia Diaz Dennis

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Federal Communications Commission Record

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-362

In re Applications of

BOTT COMMUNICATIONS, INC. File No. BPH-850503MA

For Construction Permit for a New FM Station Hastings, Nebraska

NOTICE

Released: March 15, 1988

Administrative Law Judge Walter C. Miller's Summary Decision in this proceeding (FCC 88D-1) was released January 21, 1988. No exceptions have been filed, and the Commission has not ordered a review of the Summary Decision on its own motion. Fifty days have passed since public release of the Summary Decision. Pursuant to Section 1.276 of the Commission's Rules, the Summary Decision became effective on March 11, 1988 without action by the Commission.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-88

In re Applications of

RICHARD L. PLESSINGER, SR. (hereafter Plessinger)	File No. BPH-861121ME
BEREA BROADCASTING CO., INC. (hereafter Berea)	File No. BPH-861125MA
BRADLEY SCOTT PARK (hereafter Park)	File No. BPH-861125MG
EDGAR WALLACE d/b/a THE WALLACE CO. (hereafter Wallace)	File No. BPH-861126MT
MARY R. McGILL (hereafter McGill)	File No. BPH-861126MU

For Construction Permit for
New FM Station, Channel 294A, 106.7 MHz
Berea, Kentucky

HEARING DESIGNATION ORDER

Adopted: February 17, 1988; Released: March 14, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Plessinger*. Applicants for new broadcast stations are required by Section 73.3580 of the Commission's Rules to give local notice of the filing of their applications. Plessinger has published the required notice, but the notice is deficient in that it fails to provide the specific transmitter location, the height of the antenna above average terrain, and the location of the main studio. To remedy these deficiencies, Plessinger must republish an amended local notice of the application, if he has not already done so, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order, or an appropriate issue will be specified by the Judge.

3. In Exhibit 1 of his application, Plessinger indicates that he is 100% owner of WURD-FM, Georgetown, Ohio, that he is the applicant for a new FM station in Upper Arlington, Ohio, and that he owns 37.5% of the interest in the application for a new FM station in Apalachicola, Florida. Our records indicate that he has also acquired 100% interest of WJOJ(FM), Milford, Ohio on February 3, 1987 and 100% interest in WCVG(AM), Covington, Kentucky on April 1, 1987. As of February 1, 1988, Plessinger has failed to amend his application to reflect these changes in his broadcast interests. Accordingly, an appropriate issue will be specified.

4. *Berea*. On January 21, 1987, Berea filed an amendment specifying a change in transmitter site, effective radiated power, height of antenna above average terrain and, if awarded a construction permit in this proceeding, to divest all its and its principal's interest in WKXO(AM), Berea, Kentucky. The *Report and Order* in MM Docket 84-750, 50 Fed. Reg. 19936 (1985), provided that an applicant could not file an amendment to its application more than 30 days after the placement of the application on a public notice of tenderability. In *Memorandum Opinion and Order*, reconsideration in MM Docket 84-750, 50 Fed. Reg. 43157 (1985), the Commission provided that, within a group of mutually exclusive applicants, if an applicant is placed on public notice of tenderability, all applicants mutually exclusive with that application will be afforded an opportunity to file amendments during the 30-day period following publication of the public notice. The last public notice of tenderability in this proceeding was issued on December 4, 1986. Unlike the updating information submitted pursuant to 47 C.F.R. § 1.65, Berea's amendment attempts to modify the application. As such, Berea does not offer (and our records do not reveal) any justification for acceptance of this late-filed amendment. Thus, Berea's January 21, 1987 amendment is untimely filed and will be returned.

5. *Park*. In an amendment filed on February 24, 1987, Park indicated that he has been employed since January 5, 1987 as a salesman for WEKY(AM), Richmond, Kentucky and that if awarded a construction permit in this proceeding he states that he will sever all connections with this station "prior to commencement of program tests on that Berea station". Accordingly, in the event Park is awarded a construction permit, he will be required to sever his employment with WEKY(AM).

6. *OtherMatters*. The applicant below has petitioned for leave to amend its application on the date shown. The accompanying amendment was filed after the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

APPLICANT	AMENDMENT FILED
Park	February 24, 1987

7. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to the application of Plessinger whether or not the applicant has failed to comply with the provisions of 47 C.F.R. § 1.65, with respect to keeping the Commission advised of ownership changes to its application, and if so, the effect of such noncompliance on the applicant's basic qualifications.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, the following applicant shall inform the presiding Administrative Law Judge as to whether a corrected local notice of the filing of the application has been republished: Plessinger.

11. IT IS FURTHER ORDERED, That the January 21, 1987 amendment of Berea IS RETURNED as unacceptable for filing.

12. IT IS FURTHER ORDERED, That the petition for leave to amend filed by the following applicant IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein: Park (2/24/87).

13. IT IS FURTHER ORDERED, That in the event a construction permit is awarded to Park, he must sever all connections with WEKY(AM), Richmond, Kentucky prior to the commencement of program test authority.

14. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

15. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **April 4, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

16. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-87

In re Applications

Evangel Christian School, Inc. (hereafter Evangel)	File No. BPED-860815MB
Goforth Media, Inc. (hereafter Goforth)	File No. BPED-870803MB

For a Construction Permit
for a New Noncommercial FM Station on
Channel 203, Mobile, Alabama

HEARING DESIGNATION ORDER

Adopted : February 18, 1988 Released : March 14, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new noncommercial FM station.

2. *Goforth.* Goforth proposes to side-mount its antenna on the WBHY(AM) tower. A Commission staff engineering study of Goforth's proposal indicates that it may exceed the radio frequency radiation guidelines established under 47 C.F.R. § 1.1307(b). Using Table 1, Appendix D, of OST Bulletin No. 65, October, 1985 to determine the AM station's RF radiation contribution, a fence would be required at a 'worst case' distance of 10.55 meters from the base of the tower to comply with the guidelines. This is significantly greater than the 6.1 meter distance presently restricted at the WBHY(AM) site. Accordingly, Goforth is required to amend its application within 30 days of the date of this Order to demonstrate compliance with the RF radiation guidelines. The cumulative effect of the operation of WBHY, along with this proposal and any other RF users, must be included. Since the proposal of Goforth may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, it is required to submit the environmental impact information described in 47 C.F.R. § 1.1311. Accordingly, Goforth will be required to file within 30 days of the release of this Order an environmental assessment with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Goldern State Broadcasting*, 71 FCC 2d 229 (1979), *recon: denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

3. In response to Section V-G of Form 301 and the tower sketch, submitted pursuant to Item 5, Section V-G, Goforth has indicated an overall tower height above mean sea level (AMSL) of 304 feet or 92 meters. However, using the conversion factor of 0.3048 meters/feet, 304 feet converts to 92.7 meters. Commission records of the licensed WBHY(AM) tower confirms a tower height AMSL of 304 feet or 92.7 meters. Accordingly, Goforth shall file an amendment correcting the metric conversion of the overall tower height AMSL.

4. *Evangel.* The applicant Evangel, out of an abundance of caution has requested waiver of 47 C.F.R. § 73.1125 which requires an FM broadcast station to locate its main studio within the station's principal community contour. Pursuant to the *Report and Order* in MM Docket 86-407, 2 FCC Rcd 3215 (1987), the staff has determined that the waiver is unnecessary and it will be dismissed as moot.

5. Neither applicant has indicated an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency, and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.* 43 FR 49560, published October 24, 1978. In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a time-sharing issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement.

6. Inasmuch as this proceeding involves competing applicants for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, FCC 67-673, 10 RR 2d 215 (1967). Thus, the evidence adduced under this issue will be limited to available noncommercial educational FM signals within the respective service areas.

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Goforth, in which it is concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by Sections 1.1301-1319 of the Commission's Rules.

2. To determine: (a) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest, and if so, the terms and conditions thereof; (b) the extent to which each of

the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants; and (c) whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED, That Goforth amend its application within 30 days of the release of this Order demonstrating compliance with the RF radiation guidelines of 47 C.F.R. § 1.1307(b).

10. IT IS FURTHER ORDERED, That, within 30 days of the release of this Order, Goforth shall file the corrective engineering data requested in paragraph 3 with the presiding Administrative Law Judge.

11. IT IS FURTHER ORDERED, That the waiver request submitted by Evangel IS HEREBY DISMISSED AS MOOT.

12. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

13. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **April 4, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

14. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-86

In re Applications of

GREAT LAKES BROADCASTING, INC. (hereafter Great)	File No. BPH-870327KA
SUSAN B. KLAUS (hereafter Klaus)	File No. BPH-870327MC
HURON BROADCASTING CORPORATION (hereafter HBC)	File No. BPH-870327MH
HURON COMMUNICATIONS COMPANY (hereafter HCC)	File No. BPH-870331OB
BEVERLY LYNN ECKARDT, BEATRICE ECKARDT - BALL, *ET AL* D/B/A RADIO VOICE OF HURON (hereafter Voice)	File No. BPH-870331OY
THOMAS W. ROBERTS (hereafter Roberts)	File No. BPH-870331PF
LAKESHORE COMMUNITY RADIO, A GENERAL PARTNER - SHIP OF TWOPEGS RADIO PARTNERS AND PRIMEMEDIA BROADCASTING, INC. (hereafter Lakeshore)	File No. BPH-870331PG
NCB ENTERPRISES, INC. (hereafter NCB)	File No. BPH-870410KC
FIRELANDS BROADCASTING CORP. (hereafter Firelands)	File No. BPH-870415MO

For Construction Permit for a
New FM Station on Channel 241A (96.1 MHz)
in Huron, Ohio

HEARING DESIGNATION ORDER

Adopted: February 17, 1988; Released: March 14, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *HBC*. In its Exhibit 1, HBC reported that its principals, Marty Larsen and Dean Stampfli, are employed by Ashland Broadcasting Corp., licensee of WNCO-AM/FM, Ashland, Ohio, and that they will terminate this employment should HBC's application be granted. A condition reflecting this commitment will be specified below.

3. *HCC*. HCC failed to respond to Section II, Item 10 of FCC Form 301 (1986 ed.) which addresses adverse legal findings or actions pending against the applicant. Accordingly, HCC will be required to file an amendment to its application including a response to this item with the presiding Administrative Law Judge within 30 days of the release of this Order.

4. *Voice*. In response to Section VI, FCC Form 301, Voice indicated that it will employ five or more full-time employees. Pursuant to 47 C.F.R. § 73.2080(c), it is required to submit an Equal Employment Opportunity (EEO) Program in compliance with the provisions of the rule as set forth in FCC Form 396A, the five-point Model EEO program. Voice's EEO program is deficient for failure to identify specific sources of recruitment specializing in minority candidates. Accordingly, Voice will be required to file an amended EEO program with the presiding Administrative Law Judge within 30 days of the release of this Order.

5. *Lakeshore*. In its application as originally filed, Lakeshore reported that one of its general partners is PrimeMedia Broadcasting, Inc. In its May 29, 1987 amendment, Lakeshore further stated that PrimeMedia Broadcasting, Inc. is a general partnership consisting of the listed voting stockholders. Consequently, it is unclear whether PrimeMedia Broadcasting, Inc. is a general partnership or a corporation. Accordingly, Lakeshore will be required to submit a clarifying amendment to its application to the presiding Administrative Law Judge within 30 days of the release of this Order. Furthermore, if PrimeMedia Broadcasting, Inc. is a corporation, Lakeshore must include in this amendment the officers and directors of the corporation.

6. *Firelands*. In its August 17, 1987 amendment, Firelands reported that its officer and stockholder, Shelly M. Luipold, is employed by WRWR, Inc., licensee of WOSE(FM), Port Clinton, Ohio, and that she will terminate this employment should Firelands' application be granted. A condition reflecting this commitment will be specified below.

7. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under 47 C.F.R. § 1.65, the amendments are accepted for filing. However, an applicant may not improve its comparative position after

the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Roberts	June 29, 1987
Firelands	August 17, 1987

8. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

9. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

11. IT IS FURTHER ORDERED, That in the event of a grant of HBC's application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that Marty Larsen and Dean Stampfli have resigned their positions with Ashland Broadcasting Corp., licensee of WNCO-AM/FM, Ashland, Ohio.

12. IT IS FURTHER ORDERED, That HCC shall submit the amendment requested hereinabove at paragraph 3 to the presiding Administrative Law Judge within 30 days of the release of this Order.

13. IT IS FURTHER ORDERED, That Voice shall submit the amendment requested hereinabove at paragraph 4 to the presiding Administrative Law Judge within 30 days of the release of this Order.

14. IT IS FURTHER ORDERED, That Lakeshore shall submit the amendment requested hereinabove at paragraph 5 to the presiding Administrative Law Judge within 30 days of the release of this Order.

15. IT IS FURTHER ORDERED, That in the event of a grant of Firelands' application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that Shelly M. Luipold has resigned her position with WRWR, Inc., licensee of WOSE(FM), Port Clinton, Ohio.

16. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by the following applicants ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated in paragraph 7 hereinabove: Roberts, Firelands.

17. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

18. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, not later than **April 4, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

19. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-85

In re Applications of

HOLMES BEACH BROADCASTING LTD. (hereafter HBB)	File No. BPH-861205MA
SANDPIPER BROADCASTING, INC. (hereafter Sandpiper)	File No. BPH-861205MB
HOLMES BEACH COMMUNICATIONS, INC. (hereafter HBC)	File No. BPH-861205MC
ARTHUR BARNETT (hereafter Barnett)	File No. BPH-861205MK
GREG PERICH AND CHARLEY WHITE (hereafter Perich)	File No. BPH-861208MA
B. F. J. TIMM (hereafter Timm)	File No. BPH-861208MD
ROBERT V. BARNES (hereafter Barnes)	File No. BPH-861208MF
TAMPA BAY BROADCASTERS, LTD. (hereafter Tampa)	File No. BPH-861208MG
RINGLING COMMUNICATIONS CORPORATION, A FLORIDA CORPORATION (hereafter Ringling)	File No. BPH-861208MH
INTERMART BROADCASTING OF HOLMES BEACH, INC. (hereafter Intermart)	File No. BPH-861208MI
W. LYNNE DAYTON (hereafter Dayton)	File No. BPH-861208MJ
ROBERTA ROE JOHNSON, D/B/A URI BROADCASTING CO. (hereafter Uri)	File No. BPH-861208MK
MS. SYLVIA A. FERNANDEZ (hereafter Fernandez)	File No. BPH-861208MO
PATRICK D. MCCONNELL (hereafter McConnell)	File No. BPH-861208MQ
ASTERISK BROADCASTING, INC. (hereafter Asterisk)	File No. BPH-861208MR
SOUTHMAYD BROADCASTING COMPANY (hereafter Southmayd)	File No. BPH-861208MS
HOLMES BEACH FM LIMITED PARTNERSHIP (hereafter HBFM)	File No. BPH-861208MT
GOLDEN GULF BROADCASTERS (hereafter Golden)	File No. BPH-861208MV
CORNERSTONE COMMUNICATIONS, INC. (hereafter Cornerstone)	File No. BPH-861208MW
WEST COAST BROADCASTING, INC. (hereafter West)	File No. BPH-861208MX
SARA BAY BROADCASTING LIMITED PARTNERSHIP (hereafter Sara)	File No. BPH-861208MY

For Construction Permit for a New FM station on Channel 254A (98.7 MHz) in Holmes Beach, Florida

HEARING DESIGNATION ORDER

Adopted: February 17, 1988; Released: March 14, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. *HBB*. HBB indicated in its application that it is a limited partnership consisting of a general partner, Cheryl Paul, and unnamed limited partners which are insulated from attribution pursuant to the *Attribution Reconsideration Order*, 58 RR 2d 604 (1985). HBB reported in Table 1 (Parties to Application), Section II, Item 5(a), that Paul has a 10% partnership interest in the application. HBB failed to indicate, however, whether Paul is the only general partner or whether HBB may be contemplating additional, as yet unnamed, general partners. Accordingly, HBB will be required to resolve this ambiguity by filing an amendment to its application with the presiding Administrative Law Judge within 30 days of the release of this Order.

3. *Barnes*. In Exhibit No. 1A to its March 4, 1987 amendment, Barnes reported that he is employed as operations manager of WSPB(AM), Sarasota, Florida, by licensee Robert W. Weeks, and that he will terminate this employment should his application be granted. A condition reflecting this commitment will be specified below.

4. *Ringling*. In its Exhibit "A" in response to Section II, Item 7(e) of its application, Ringling reported that its officer, director, and share- holder, Herbert Hurwitz, has an ownership interest in Southern Broadcast Corporation of Sarasota, A Florida Corporation, licensee of WWSB(TV), Sarasota, Florida, and that he will divest this interest should Ringling's application be granted. A condition reflecting this commitment will be specified below.

5. On December 28, 1987, Ringling submitted an amendment to its application for an engineering change. The amendment was filed subsequent to the amendment as-of-right period and its accompanying "good cause" showing was insufficient to support acceptance at this time. *See* 47 C.F.R. § 73.3522(a)(6); *Report and Order* in MM Docket No. 84-750, 50 Fed. Reg. 19,936 (May 13, 1985). Accordingly, the amendment will be returned.

6. *HBFM*. HBFM provided incorrect tower heights in response to Section V-G, Item 5. HBFM stated its tower's overall height above ground to be 295 feet, instead of 298 feet, and its overall height above mean sea level to be 298 feet, instead of 303 feet as shown on the tower sketch. However, despite this error, the staff was able to determine the correct values from a study drawing from the application as a whole since HBFM's Exhibit V-G 5 showed the same figures as its tower sketch. Thus, the error did not render unacceptable HBFM's application which complies with all of our technical acceptance requirements. However, HBFM will be required to submit a corrective amendment to its application to the presiding Administrative Law Judge within 30 days of the release of this Order. In addition, an air hazard issue will be specified.

7. *Other matters*. The following applicants miscalculated their HAAT's for the eight listed radials in Section V-B, Item 15: Asterisk improperly excluded the 0' and 315' radials from its HAAT computation, and HBC, Timm, and Tampa each excluded the 225' and 315' radials from their HAAT computations contrary to 47 C.F.R. § 73.313(d)(2). This error has no effect on the acceptability of the applications which comply with all of our acceptance criteria because the proposals as filed or with the excluded radials would not violate the maximum HAAT and ERP for Class A facilities pursuant to 47 C.F.R. § 73.211. However, Asterisk, HBC, Timm, and Tampa will each be required to submit appropriate amendments to their applications with the presiding Administrative Law Judge within 30 days of the release of this Order.

8. In response to Section VI, FCC Form 301, the applicants below indicated that they will each employ five or more full-time employees. Pursuant to 47 C.F.R. § 73.2080(c), each applicant is required to submit an Equal Employment Opportunity (EEO) Program in compliance with the provisions of the rule as set forth in FCC Form 396A, the five-point Model EEO Program. The following applicants submitted EEO programs that are incomplete or are otherwise deficient.[2] Accordingly, the following applicants will be required to file amended EEO programs with the presiding Administrative Law Judge within 30 days of the release of this Order.

APPLICANTS	DEFICIENCIES
Sandpiper	Failed to identify specific sources of recruitment specializing in minority candidates.
Timm	Failed to identify specific sources of recruitment specializing in women candidates.
Fernandez	Failed to identify specific sources of recruitment specializing in minority and women candidates.
Cornerstone	Failed to identify specific sources of recruitment specializing in minority and women candidates; failed to identify employment services which refer candidates without regard to race, color, religion, national origin, or sex.

9. The applicants below petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under 47 C.F.R. § 1.65, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Sandpiper	January 13, 1988.
Perich	July 20, 1987 [engineering]; December 14, 1987.
Timm	November 23, 1987.
Intermart	June 8, 1987; August 24, 1987; October 19, 1987; December 4, 1987; January 27, 1988.
Uri	December 11, 1987.
Asterisk	December 22, 1987.
West	August 7, 1987; October 20, 1987.
Sara	September 21, 1987; September 24, 1987;

December 15, 1987.

10. Since no determination has been received from the Federal Aviation Administration (FAA) as to whether the antennas proposed by the applicants below would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA will be made a party to the proceeding.

APPLICANTS: HBB, Sandpiper, Barnes, Ringling, Intermart, Uri, Fernandez, McConnell, Southmayd, HBFM, Golden, Cornerstone, and West.

11. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

12. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

13. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower heights and locations proposed by the following applicants would constitute a hazard to air navigation: HBB, Sandpiper, Barnes, Ringling, Inter- mart, Uri, Fernandez, McConnell, Southmayd, HBFM, Golden, Cornerstone, and West.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

14. IT IS FURTHER ORDERED, That HBB shall file an amendment to its application pursuant to paragraph 2 hereinabove with the presiding Administrative Law Judge within 30 days of the release of this Order.

15. IT IS FURTHER ORDERED, That in the event of a grant of Barnes' application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that Robert V. Barnes has resigned his position with Robert W. Weeks, licensee of WSPB(AM), Sarasota, Florida.

16. IT IS FURTHER ORDERED, That in the event of a grant of Ringling's application, the construction permit shall be conditioned as follows: Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that Herbert Hurwitz has divested his interest in Southern Broadcast Corporation of Sarasota, A Florida Corporation, licensee of WWSB(TV), Sarasota, Florida.

17. IT IS FURTHER ORDERED, That in accordance with paragraph 5 hereinabove, Ringling's amendment filed December 28, 1987, IS HEREBY RETURNED.

18. IT IS FURTHER ORDERED, That in accordance with paragraphs 6 and 7 herein-above, the following applicants shall each submit the requested amendments to their respective applications with any appropriate engineering exhibits to the presiding Administrative Law Judge within 30 days of the release of this Order: Asterisk, HBFM, HBC, Timm, and Tampa.

19. IT IS FURTHER ORDERED, That in accordance with paragraph 8 hereinabove, the following applicants shall submit to the presiding Administrative Law Judge amendments to their EEO programs within 30 days of the release of this Order: Sandpiper, Timm, Fernandez, and Cornerstone.

20. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by the following applicants ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated in paragraph 9 hereinabove: Sandpiper, Perich, Timm, Intermart, Uri, Asterisk, West, and Sara.

21. IT IS FURTHER ORDERED, That the FAA IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

22. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

23. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, not later than **April 4, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

24. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] The application of Gulf Broadcasting, A Limited Partnership (File No. BPH-861208MP) was dismissed on February 3, 1988, pursuant to the applicant's request.

[2] In the event that an applicant listed an organization in its EEO program as a recruitment source which is unfamiliar to the staff but which would satisfy the EEO requirements, the applicant may amend its EEO program to describe that organization.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-269

In re Applications of

ST. CROIX WIRELESS CO., A LIMITED PARTNERSHIP	File No. BPH-850711QD
SUGARBIRD COMMUNICATIONS	File No. BPH-850712DD
SUNSHINE-EAGLE BROADCASTING CO.	File No. BPH-850712W4
KAREEM ABDULGHANI	File No. BPH-850712W6

For Construction Permit
for a New FM Station
Christiansted, Virgin Islands

ERRATUM

Released: March 14, 1988

Our *Memorandum Opinion and Order,* FCC 88R-13, released March 2, 1988, contains a computer-originated word truncation which we correct as follows:

Paragraph 6, line 4, change "properly" to "improperly".

By Direction of the Review Board

Allan Sacks
Chief for Law

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-105

In the Matter of

AT&T Communications Tariff F.C.C. No. 1 Hospitality Network Service — Transmittal No. 1046

ORDER DESIGNATING ISSUES FOR INVESTIGATION

Adopted: February 26, 1988; Released: March 2, 1988

By the Chief, Common Carrier Bureau:

I. BACKGROUND

1. On January 22, 1988, this Bureau released an Order suspending and initiating an investigation of a tariff filed by AT&T Communications (AT&T) proposing to introduce Hospitality Network Service (HNS).[1] We found that AT&T's proposal to pay commissions for the "0+" calls of HNS subscribers could be an unlawful rebate of tariffed charges in violation of Section 203(c)(2) of the Communications Act, 47 U.S.C. § 203(c)(2), such that suspension and investigation were warranted.[2] We also noted that the petitioners in this proceeding had raised other issues which might warrant further investigation and that we would designate issues to be investigated, and establish a pleading schedule, in a subsequent Order. This Order designates the issues to be investigated in this proceeding and establishes a pleading cycle.

2. HNS is a new AT&T switched network offering designed to attract users such as hotels, hospitals, universities, and other traffic aggregators who have a high volume of both "1+" and "0+" calling.[3] HNS provides customers who have at least 4 million minutes each of "1+" and "0+" calling per month a rate of 18 cents per minute for "1+" calls, [4] and a payment ranging from 5 cents to 30 cents for each "0+" call made from the customer's premises. The customer must commit for a one-year period to deliver to AT&T at least 4 million minutes of interstate "0+" traffic per month[5] and to pay the monthly recurring charge for "1+" calling regardless of its actual "1+" calling volume. The payment from AT&T to its customers for "0+" calls placed from the customer's premises will range from 5 cents to 30 cents per call depending on (1) the grade of service the customer agrees to provide; (2) whether it uses Touch-Tone type customer premises equipment (CPE); and (3) its calling volume.[6]

3. As noted above, the HNS subscriber pays some amount less than the tariffed rate for "1+" service because it receives payments for delivering a specified volume of "0+" calls to AT&T which offset its "1+" charges. AT&T itself has characterized the "0+" component of the bundled HNS offering as intended to encourage the HNS customer to use AT&T "1+" service.[7] We concluded that this could be an illegal rebate and that suspension of the tariff was warranted pending investigation. Accordingly, the investigation will focus in part upon the rebate question. If it chooses to do so, AT&T may incorporate its application for review of the suspension order as part of its direct case on the rebate question. AT&T may also supplement its arguments or citations if it wishes to do so.

II. DESIGNATION OF ISSUES TO BE INVESTIGATED

4. AT&T's application for review of the *January 22 Order* appears to be based upon the premise that a rebate that is described in the tariff does not violate Section 203(c)(2). We note that this tariff arguably does not describe the rebates with sufficient certainty to avoid a conclusion that AT&T will be providing rebates that are not described in the tariff.

5. Even if the Section 203(c) rebate prohibition did not exist, the "tie-in" of "1+" rates and "0+" commissions might constitute an "unreasonable practice" that violates Section 201(b) of the Communications Act, 47 U.S.C. § 201(b). We note that AT&T still has a very substantial market position in both markets and appears to have a more dominant position in a "0+" market than it possesses in the "1+" market. Competitors in the "1+" market have alleged that "1+" competitors would be unfairly disadvantaged if AT&T uses its position in the "0+" market to induce "1+" customers to use AT&T services. That argument appears to be meritorious. Therefore, we conclude that an investigation is warranted to determine whether the "tie-in" of "1+" service and "0+" commissions in this proposed tariff is an unjust and unreasonable practice.[8] We also conclude that this unreasonable practice question would be sufficient to warrant a suspension if the Section 203(c) rebate question did not exist.

6. Accordingly, we direct AT&T to demonstrate in its direct case why the "tie-in" of "1+" and "0+" services in the proposed HNS offering does not constitute an "unreasonable practice" under Section 201(b) of the Communications Act. In addition, AT&T is directed to respond in its direct case to the following questions relating to the Section 203(c) rebate question:

> (1) Section 203(a) of the Communications Act, 47 U.S.C. § 203(a), requires carriers to file schedules showing all charges for interstate communications and showing the classifications, practices, and regulations affecting such charges. Section 203(c)(2) prohibits the refund by any means or device of any portion of the charges so specified. AT&T has stated that the "0+" compensation for HNS could be viewed as a practice affecting the charges for the "1+" service used by the HNS customer.[9] AT&T should explain why the "0+" compensation plan, which is by AT&T's own admission designed to encourage use of the basic "1+" service, does not constitute a device or means to remit charges for the "1+" portion of the bundled HNS offering.

(2) Does the "0+" compensation result in a different net charge for "1+" service than that shown in the HNS tariff?

(3) How can a customer or potential customer determine from the tariff schedule what is actually being charged for HNS since the actual rebate a subscriber receives is dependent on information about that subscriber (grade of service, *etc.*) that is not specified in the tariff?

(4) How will AT&T determine the grade of service used by HNS customers, both initially and on a continuing basis? Does the grade of service requirement apply to individual customer premises or to the aggregate premises of the customer?

(5) What performance parameters are necessitated by the requirement that customers provide Touch Tone-type CPE to obtain the higher commission payments? How does AT&T propose to verify compliance with this tariff requirement? Similarly, how does AT&T propose to ensure compliance with its requirement that an HNS customer must provide information in each guest room regarding how to make a call using the AT&T network?

III. PROCEDURAL REQUIREMENTS

7. This investigation will be conducted as a notice and comment proceeding to which the procedures set forth in this Order shall apply. Accordingly, we require AT&T no later than March 22, 1988 to file a direct case addressing the issues outlined above. In its direct case, AT&T must answer each specific question listed in Section II, *supra*. Moreover, the direct case must supply all information upon which AT&T relies to support its position. Pleadings opposing the direct case may be filed by interested parties no later than April 6, 1988 and must be captioned "Opposition to Direct Case" or "Comments on Direct Case." AT&T may file a "Rebuttal" to oppositions and comments no later than April 13, 1988. All opposition, comments, and AT&T's rebuttal must also be organized to reflect the issues designated in this Order.

8. An original and seven copies of all pleadings shall be filed with the Acting Secretary of the Commission. In addition, one copy shall be delivered to the Commission's commercial copying firm, International Transcription Service, Inc. (ITS), Room 246, 1919 M Street, N.W., Washington, D.C. 20554. Members of the general public who wish to express their views in an informal manner regarding Transmittal 1046 may do so by submitting one copy of their comments to the Acting Secretary, Federal Communications Commission, Washington, D.C. 20554.

9. *Ex parte* contacts (*i. e.*, written or oral communications which address either the procedural or substantive merits of the proceeding which are directed to any member, officer, or employee of the Commission who may reasonably be expected to be involved in the decisional process in this proceeding) are permitted in this proceeding until a public notice of scheduled Commission consideration of a final Order is released and after the final Order itself is issued. Written *ex parte* contacts must be filed, on the same day submitted, with the Acting Secretary for inclusion in the public file. A written summary of oral *ex parte* presentations must be served, on the same day presented, on the Acting Secretary and Commission employees receiving each presentation. For other requirements, *see generally* Section 1.1200 *et seq.* of the Commission's Rules, 47 C.F.R. § 1.1200 *et seq.*

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201(b), 203(c), 204(a), and 205 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203(c), 204(a), and 205, that the issues set forth in Section II, *supra*, ARE DESIGNATED FOR INVESTIGATION.

11. IT IS FURTHER ORDERED that American Telephone and Telegraph Company shall be a party to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Revisions to AT&T Communications Tariff F.C.C. No. 1, Hospitality Network Service, Transmittal No. 1046, DA 88-48, released Jan. 22, 1988 (*January 22 Order*). The HNS tariff is currently scheduled to take effect June 22, 1988, at the end of the five-month suspension period.

[2] On January 25, 1988, AT&T filed an emergency application for review of the *January 22 Order* contending that the "0+" payments cannot be an unlawful rebate because the payment plan was included directly in the proposed tariff (rather than as an arrangement outside the terms of the tariff). The application was accompanied by a motion for expedited briefing schedule, requesting Commission action on or before February 12, 1988.

[3] Calling referred to as "0+" calling includes Customer Dial Calling Card, Operator Station, Person to Person third party, collect, and calling card billed.

[4] For the first 4 million minutes of traffic, the effective 18 cent per minute rate is composed of a monthly recurring charge of360,000 and a usage sensitive charge of 9 cents per minute. For any "1+" traffic above 4 million minutes per month, the 18 cent per minute rate applies with no additional monthly charge. The customer remains liable for the fixed monthly charge if it terminates service before the one-year term expires.

[5] A shortfall charge of 4 cents per minute will be assessed for each minute of use below the customer's commitment to deliver 4 million minutes per month of "0+" traffic.

[6] To receive any compensation, customers must provide information in each guest room explaining how guests may make a call using the AT&T network.

[7] *See* AT&T Private Payphone Commission Plan, ENF 87-19, Opposition of AT&T to Supplement to Petition for Declaratory Ruling, filed Dec. 7. 1987, at 3 (*Private Payphone*).

[8] Although the illegal "tie-in" provision of Section 3 of the Clayton Act does not appear to be directly applicable to telecommunications common carriers, the principles articulated therein provide additional support for our inquiry as to whether the HNS offering constitutes an unreasonable practice under the CommunicationsAct.

[9] *Private Payphone* at 4.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-309

In the Matter of

Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service Off of the Island of Puerto Rico

ORDER

Adopted: February 29, 1988 **Released: March 1, 1988**

By the Chief, Common Carrier Bureau

1. On February 24, 1988, A-Plus Information Processing Company (APIP) filed a petition requesting an extension of time, until March 23, 1988, to reply to oppositions to the petitions for reconsideration of the Commission's Report and Order in this proceeding.[1] The replies are presently due March 2, 1988.[2] APIP states that an extension of time is necessary because its counsel is involved in litigation that will be conducted through the date the replies are due. APIP asserts that several other parties involved in this proceeding have been contacted and "have consented to such an extension" [3] of time. However, the Puerto Rico Telephone Company (PRTC) has filed an opposition to APIP's request, arguing that any delay in Commission action on PRTC's petition for reconsideration would delay the fullest possible competition in off-island services. PRTC also argues that APIP lacks sufficient interest to give it standing in the present reconsideration proceeding.[4]

2. While we support the introduction of full competition in the provision of off-island services for Puerto Rico, we find that certain conditions should be imposed on PRTC's entry into this market to ensure a level playing field for all entrants. In light of the importance of these conditions in ensuring fair competition, we believe that the public interest in the development of a full and complete record in this proceeding would be served by an extension of time in the present circumstances. We conclude, however, that this goal can be achieved by means of an extension that is more limited than the one requested by APIP. We will therefore extend the time for filing replies until March 9, 1988, rather than March 23, 1988 as requested by APIP.

3. Accordingly, IT IS HEREBY ORDERED, pursuant to Sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j) and 155(c), and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, that APIP's motion IS GRANTED TO THE EXTENT DESCRIBED HEREIN AND IS OTHERWISE DENIED. IT IS FURTHER ORDERED, that replies to the oppositions in this proceeding ARE DUE on or before *March 9, 1988.*

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service Off of the Island of Puerto Rico, 2 FCC Rcd 6600 (1987).

[2] Extension of Time for Filing Oppositions to Petitions for Reconsideration, Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service Off of the Island of Puerto Rico, 3 FCC Rcd 474 (1988).

[3] APIP Motion at 1. The parties "consenting to an extension of time" are General ComServ Corporation, Call U.S., Inc. and MCI CommunicationsCorporation.

[4] We are disinclined to consider an argument of this nature in the context of a request for an extension of time.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re the Application of

IOWA NETWORK ACCESS DIVISION — File No. W-P-C-6025

For authority pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission's Rules and Regulations to lease transmission facilities to provide access service to interexchange carriers in the State of Iowa.

MEMORANDUM OPINION, ORDER AND CERTIFICATE

Adopted February 29, 1988 **Released February 29, 1988**

By the Chief, Common Carrier Bureau:

1. Iowa Network Access Division (INAD or Applicant) has filed the above-captioned application pursuant to Section 214 of the Communications Act of 1934 (Act), 47 U.S.C. § 214, and Section 63.01 of the Commission's Rules and Regulations, 47 C.F.R. § 63.01. INAD seeks authority to lease transmission facilities to provide access services to interexchange carriers. American Telephone and Telegraph Company (AT&T), Iowa State Utilities Board (ISUB), MCI Telecommunications Corporation (MCI), National Telephone Cooperative Association (NTCA), Northwestern Bell Telephone Company (NWB) and the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) filed comments. In a letter dated August 31, 1987, the Bureau requested INAD and NWB to provide additional information. OPASTCO, NWB and NTCA filed comments in response to the filings.[1]

APPLICATION

2. INAD proposes to lease and operate a number of DS-1 (1.544 Mbps) digital channels in order "to provide to their subscribers (136 independent Iowa Telephone Exchange Carriers) the benefits of equal access and interexchange carrier competition"[2] from a central location at Des Moines, Iowa. These facilities would be leased from Iowa Network Interexchange Carrier Division (INICD), an affiliate of INAD.[3] The operating plan outlined by INAD calls for INICD to construct and operate a fiber optic network primarily within the State of Iowa. [4] The network would connect the existing toll center locations at which the end offices of the 136 ITCs home with INAD's tandem switch in Des Moines. INAD plans to use the existing trunk facilities between the 136 participating independent telephone companies' end offices and the homing toll centers to connect the exchanges of the ITCs to the fiber network.[5] Under the proposed scheme, interexchange carriers (IXCs) purportedly could obtain Feature Group B and D services to access approximately 158,000 subscriber's lines from a centralized location -- INAD's Des Moines tandem switch. INAD also proposes to permit access to its network at 16 other sites in Iowa, but various switching, screening and recording and translation functions would be performed at the central switch. To implement its proposal, INAD estimates that its basic expenses (general and administrative expenses, and lease of transmission and switching capacity) will be10,428,372 over the next five years. INAD also seeks Section 214 authority to serve ITCs that may choose to utilize its services in the future.[6]

INTRODUCTION

3. The INAD proposal is presented as a solution to the problem of how to achieve competition in long distance services in small rural communities. In the INAD-member exchanges in Iowa, only AT&T offers interstate toll service, and other IXCs have not requested local exchanges to provide the equal access capability which would allow them to compete with AT&T on equal terms. INAD believes an important reason is that those IXCs would find it an expensive task to provide their own facilities to each of these small exchanges, given the relatively low amount of toll traffic they generate. Conversion of these end offices to provide equal access would also involve significant costs, especially for those exchanges with older, electromechanical switches that are not easily adaptable to equal access functions and are not likely to be replaced within a few years. INAD contends that its proposal would solve these problems and encourage IXC competition by concentrating its members' traffic at a single centralized equal access tandem switch.

4. The goal of the INAD system is one this Commission considers an important priority - to speed the availability of high quality, varied competitive services to small towns and rural areas. The primary questions presented by this application are first, whether it is properly a matter for Commission action under the Communications Act and our rules, and second, whether the public convenience and necessity will be served by the facilities INAD seeks to lease from its affiliated company.

5. As we discuss below, most commenters support the INAD proposal, but others raise various concerns regarding its merits. We address first the question of whether the application is properly before us.

COMMENTS AND DISCUSSION

6. *Section 214 applicability.* NWB argues that Section 214 of the Act is inapplicable to INAD's proposal and thus the application is improperly filed. While Section 214 requires the Commission to review and approve the construction or operation of a new "interstate line," NWB states that neither the Act nor the rules define an "interstate line." NWB states that "Section 214 expressly excludes from its scope 'a line within a single state unless such line constitutes part of an interstate line' -- indicating that certain lines located wholly within a state do not constitute an interstate line."[7] Moreover, it maintains that the Commission historically has excluded from Section 214 consideration all lines below a Class 4 office and, since divestiture, all lines below an exchange carrier's access tandem switch. Therefore, NWB urges the Commis-

sion to dismiss INAD's application as unnecessary. NWB also asserts that because the preponderance of traffic on INAD's system will be intrastate and because most of the federal issues raised could be resolved when INAD files its interstate tariff, ISUB should review INAD's proposal. In the event the Commission decides Section 214 is applicable, however, NWB requests that the Commission refer the subject proposal to ISUB before acting.

7. INAD contradicts NWB's assertion that because only 31% of the traffic on its proposed network is interstate Section 214 is inapplicable. INAD states that the Commission has never based its jurisdiction on a quantitative test. Indeed, it notes, the Commission granted a Section 214 authorization in *Indiana Switch Access Division* [8] based on a system located wholly in a single state. In the instant case, INAD urges, the need for Section 214 certification is even clearer because INAD proposes to lease transmission facilities to link its central access tandem in Des Moines, Iowa, with a toll center in Omaha, Nebraska. It claims there is no conflict between state and federal regulators; Part 36 of the Commission's rules contains procedures for allocating costs of facilities between interstate and intrastate jurisdictions.

8. In its reply, AT&T agrees with INAD's conclusion that Section 214 applies to centralized access proposals. AT&T states that any other conclusion would hamper the Commission's ability to assess the public convenience and necessity through balancing the costs and benefits of such proposals. Besides, AT&T notes, INAD will engage in interstate transmission over its leased facilities. NWB, it further notes, is relying on the exception contained in Section 214(a) that no certification is required if the new line lies within a single state and does not constitute "part of an interstate line." AT&T argues that INAD's facilities would constitute part of an interstate line because they would be an integral component in originating and terminating IXCs' interstate communications, citing *General Telephone of California v. Federal Communications Commission*, 413 F.2d 390 (D. C. Cir.), *cert. denied*, 396 U.S. 888 (1969).

9. *Resolution.* NWB's argument that INAD's Section 214 application is not properly filed is not correct. Section 214 of the Act requires that the Commission certify that the proposed construction, acquisition or operation of an interstate line of communications[9] by a carrier will serve the public convenience and necessity.[10] Section 214 reads in pertinent part:

> (a) No carrier shall undertake the construction of a new line or an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line: *Provided*, That no such certificate shall be required under this section for the construction, acquisition, or operation of (1) a line within a single State unless such line constitutes part of an interstate line. . . .

INAD proposes to acquire and operate lines that, *inter alia*, cross state boundaries (i.e. Omaha, Nebraska - Des Moines, Iowa) and thereby offer interstate services. Its network will serve as an integral link in originating and terminating the interstate traffic of IXCs, including its affiliate, INICD. Even if the lines being acquired and operated were within only one state, we note that a Section 214 application lies for carriers not subject to Section 2(b)(2) if the carrier uses the line to provide interstate services.[11] The literal language of the Act as well as judicial interpretations support INAD's view that it requires Section 214 authority prior to acquiring and operating any interstate lines of communications.[12],[13]

10. INAD is not among the classification of carriers acquiring interstate lines that are excused from filing for Section 214 authority. Whether a carrier must actually seek such authority or whether it has blanket authority is dependent upon its classification as defined in our Competitive Carrier Rule Making proceeding.[14] In the *First Report and Order* in CC Docket No. 79-252, the Commission determined that there are essentially two classes of carriers, dominant and non-dominant. Carriers found to be dominant exhibit market power. One of the indicia of market power is the control of bottleneck facilities, with a concomitant ability to impede competition. 85 FCC 2d at 21. In the *Fourth Report and Order* in CC Docket No. 79-252, the Commission found that a carrier may have a mixture of service characteristics, each of which may be subject to a different degree of Title II regulation, *viz.*, the full panoply of regulation, streamlined regulation, or total forbearance of Title II regulation. The degree of regulation applicable would be determined by the level of competition in the relevant market and the level of experience the Commission had gained in deregulating participants in that market. Later, in the *Fifth Report and Order* in CC Docket No. 79-252, the Commission extended forbearance to all interexchange affiliates of exchange carriers,[15] subject to the condition that affiliates and exchange carriers maintain separate books of account and do not jointly own transmission and switching equipment. If an interexchange carrier uses the facilities and/or services of an affiliated exchange carrier, it must do so pursuant to the exchange carrier's tariffs. The record discloses that Iowa Network Services, Inc., which is jointly owned by the 136 participating ITCs, will operate two divisions. One division, INICD, will operate as an IXC, while the other division, INAD, will be an access provider. Under the policies discussed above, INICD is a non-dominant carrier subject to our forbearance policies, whereas INAD is a dominant carrier providing exchange access services subject to Title II regulations and application requirements of Section 63.01. We are unable to agree with NWB that INAD's Section 214 application is not properly before us.[16]

11. *The Public Interest.* Having determined that the application is properly before us, the question becomes whether it should be granted. The touchstone of the Communication's Act is the public interest. Parties favoring INAD's application recite the Commission's rationale articulated in *Indiana Switch*, note 7, *supra*, at para. 23, that the public interest is served by providing the public with efficient access services where the public might otherwise be denied these services. ISUB adds that currently only 17.5% of all exchanges in Iowa receive originating inter-LATA toll service from a non-dominant interexchange carrier, *i. e.*, a carrier other than AT&T. AT&T's competitors are concentrating their services in the state's larger exchanges, which together account for about 60% of the state's access lines. ISUB believes that INAD's proposal to

aggregate rural traffic through a central point should be attractive to non-dominant IXCs and should encourage IXC competition in rural Iowa.

12. Although it supports INAD's proposal, NWB contends there are material differences between INAD's and Indiana Switch's proposals. First, Indiana Switch did not propose to charge the designated interLATA toll carrier[17] a surcharge to carry its traffic. Second, NWB alleges that INAD's plan is three times more costly than Indiana Switch's and that INICD does not propose to charge INAD the lowest cost it charges other network users, as was the case in *Indiana Switch*. Third, unlike Indiana Switch, INAD may have a competitor for access service. NWB discloses that it plans to install new equal access adjunct devices at its access tandem switches to provide its and other exchange carriers' customers served by nonconforming end offices with equal access. One option NWB suggests is for participating carriers to connect to its equal access adjunct devices, which it claims will be less costly than INAD's arrangement. As a second option, NWB recommends that INAD members convert their end offices to equal access. NWB suggests this conversion could be achieved at 130 of the 306 switches of INAD members at a cost of10 per subscriber line.

13. NWB also challenges the assertion that access traffic must be aggregated at a centralized location to attract multiple IXCs. NWB states that with one exception each of its access tandem switches, which serve the five Iowa LATAs and directly or indirectly aggregate INAD members' toll traffic, connects to at least seven IXCs. So, if a participating carrier converted its end offices or connected with one of NWB's adjunct devices it would have access to at least six IXCs other than AT&T. Thus, NWB feels the issue "is not whether the exchange access traffic of small exchange carriers will be aggregated, but where it will be aggregated." NWB Comments, p. 14. In any event, states NWB, it has no intention of paying for INAD services (such as terminating traffic for it) for which it has no need.

14. INAD claims that its plan will be less disruptive than Indiana Switch's because it proposes 16 optional interconnection locations which are near AT&T's points of presence (POPs) and NWB's access tandems. INAD contends that NWB's analysis of INAD's revenue requirements fails to consider that over twice as many access lines and nearly six times as many end offices would be connected to this fiber network than in *Indiana Switch*, and that the average size of the Iowa exchanges is about a third of those involved in *Indiana Switch*. INAD asserts that this aggregation of traffic should reduce the access charges NWB assesses IXCs. INAD contends that NWB has not defined the expenses ITCs would incur using NWB's adjunct devices, and future costs of adjunct devices are likely to change. INAD concludes that the costs for individual end office conversion are not justified, given the limited current requests for equal access in these rural exchanges. INAD believes its proposal is the most practical because it will provide centralized equal access most economically and will promote competition among IXCs without altering the compensation arrangements between local exchange carriers. In any event, it notes, the Commission has stated that Section 214 does not require that costs associated with a proposal be the least expensive alternative.[18]

15. In contrast to NWB, INAD believes that centralized access service reduces the risk and cost of serving rural subscribers and removes the need for IXCs to invest in additional transmission facilities to reach converted end offices. Clearly, it states, centralized access service is a prudent means of providing equal access interconnections, although it may not necessarily be the most economical one, citing *Indiana Switch*, at para. 23. Furthermore, should INAD members modify their end offices to offer equal access there is no guarantee IXCs would locate their POPs in their areas, nor are NWB's adjunct devices a complete answer, it states. INAD claims that NWB does not know what it would charge for these devices, but more importantly, INAD asserts, if INAD members subscribed to NWB's offering they would be heavily dependent upon NWB's services and its decisions. NWB's threats to not use the INAD network to terminate certain NWB traffic are unavailing, claims INAD, because centralized equal access is, by definition, a two-way service. Terminating calls must be transported to the central access tandem for ticketing and billing; otherwise INAD members would need to upgrade each end office to provide these services.

16. NWB later explains that one of the advantages of its adjunct arrangement is that it requires no substantial changes in embedded switching equipment or transmission facilities and is cheaper than switch replacement. One disadvantage of its arrangement, NWB acknowledges, is that ITC subscribers may experience greater post-dialing delay than if end offices were converted to equal access, although a number of matters have a bearing on post-dialing delay. In addition, it states, its current plans call for the installation of these devices at only four of its seven toll sites because those are the only locations at which service has been requested. But it notes that use of its adjunct devices could accelerate the availability of choice of IXCs in some rural areas of Iowa.

17. OPASTCO and NTCA maintain that NWB did not provide sufficient information to permit an informed comparison of its adjunct device alternative against INAD's proposal, and that on the surface NWB's option is less appealing to IXCs because it does not offer access at the same level of traffic concentration planned by INAD. Moreover, OPASTCO states, NWB's current plans exclude installation of adjunct devices at a number of toll centers, which means many rural subscribers would continue to be denied access to non-dominant IXCs. Besides, it notes, no non-dominant carrier has displayed any interest in NWB's option. OPASTCO also believes use of NWB's arrangement would disadvantage small telephone companies because they would be required to disclose proprietary customer information and shift maintenance, administration and operational control of their businesses to NWB. Moreover, it claims, the ITCs would receive an inferior access service and the IXCs would be offered a lesser quality of service than AT&T currently receives.

18. In a letter dated September 24, 1987, NWB explains that its rates for its access option would range between0.27 -0.36 per hundred access minutes if its adjunct devices were priced under the same set of assumptions used by INAD. It challenges some of the assumptions, however. The number of access minutes on which INAD based its calculations appears to be overstated, according to NWB, because 69 percent of those minutes are attributed to intrastate services. Also, the cost of converting each end office to equal access appears to be overstated, and the

assumption that NWB will impose a separate interstate charge on IXCs for use of NWB's switch is incorrect. Nevertheless, for the sake of comparison, NWB maintains that the options and costs are: INAD's proposal at a cost of1.61 per hundred access minutes, ITC end office conversion at0.65 per hundred access minutes and its adjunct device plan at a cost of between0.27 -0.36 per hundred access minutes. INAD replies that NWB ignores the cost of access tandems, the lease costs for additional transmission facilities and the value of concentration.

19. *Resolution.* One of the Commission's objectives in CC Docket No. 78-72[19] was to implement prudent methods of compensating for use of exchange plant used in interstate and foreign telephone services, and to correct disparities in access charges paid by users of telephone companies' services. In the *Third Report and Order* of that docket, 93 FCC 2d 241 (1983), and *Report and Order*, 100 FCC 2d 860 (1985), the Commission adopted rules and policies designed to implement an equitable compensation plan for use of exchange carriers' facilities, otherwise known as access service.[20] Because of inherent differences in equipment and size of carriers providing access facilities, the Commission adopted different requirements for the generally smaller ITCs than those adopted for the larger exchange carriers, *i. e.*, the Bell Operating Companies (BOCs) and General Telephone Operating Companies (GTE). The provision of access service by the BOCs is driven in large measure by the MFJ,[21] which defines exchange access as including the "delivery and receipt of such traffic at a point or points within an exchange area designated by an interexchange carrier for the connection of its facilities with those of the BOC." The same obligation has not been placed on ITCs, however. During its proceeding addressing equal access schemes for ITCs, the Commission was sensitive to the degree of diversity of end office equipment among ITCs as compared to the more standardized offices of the BOCs. It considered employing the GTE Consent Decree (CD)[22] as a model to achieve equal access among non-GTE ITCs, but recognized that "different types of equipment (in addition to those specified in the CD) are deployed in the non-GTE ITC end offices."[23] Because of these differences, the Commission decided to:

> . . . establish an implementation schedule that recognizes the following characteristics of the non-GTE sector, which distinguish it from both GTE and the BOCs: (a) the variability in installed SPC [stored program control] equipment types; (b) the predominance of electromechanical equipment; (c) the existence of more severe constraints on capital spending; and (d) the likelihood that demand for equal access service, by customers and OCCs [other common carriers] alike, will be less . . . In so doing, we shall impose time limits in those cases where the end office is equipped with SPC switching and a reasonable request for equal access services exists. Finally, we shall recognize the existence of problems that may be imposed by capital constraints, and the nonstandardization of installed SPC equipment, by adopting an exception mechanism.[24]

The Order recognized the variation among ITC offices in the types of exchange access currently offered to AT&T. Therefore, the Commission defined equal access to require that service features be offered to the OCCs to the same extent they are made available to AT&T. In addition, the Commission has stated that ITCs operating with electromechanically-equipped end offices may wish to deploy "techniques such as interconnection on a tandem basis where common equipment is capable of supporting such operation."[25] Thus, the Commission anticipated different access schemes for the ITCs to accomplish the broader goal of universally available equal access.

20. In *Indiana Switch*, note 7, *supra*, the Commission considered a proposal similar to INAD's. It upheld findings by its Common Carrier Bureau that centralized equal access by independent telephone companies could be an efficient means of implementing equal access to subscribers who otherwise might be denied the benefits of IXC competition. But it also found:

> Until we have a clearer picture of the overall impact of the subject proposal, we will not establish by this authorization a blanket policy favoring similar proposals elsewhere. Each future application will be examined independently on the unique facts and circumstances presented therein.

Indiana Switch at para. 5. Indiana Switch's proposal has not been implemented.

21. In its proposal INAD plans to offer (a) interconnection to all IXCs equal in type and quality to what AT&T will receive, (b) presubscription, and (c) means by which all IXCs will be accessible via a minimum number of digits. Moreover, all IXCs, including INICD, will pay INAD's tariffed rates for its access services. If the project attracts IXCs who compete with AT&T in providing services from these exchanges, rural areas of Iowa should benefit from INAD's plan in that competition among IXCs would be fostered, with IXC choice available for the first time to thousands of ITC subscribers. INAD's representations are sufficient for us to find that this kind of plan will serve the public interest, convenience and necessity. Indeed, grant of the Section 214 application is unopposed.

22. NWB is in the process of implementing equal access arrangements for its own nonconforming offices which could also be used by most INAD members. This alternative may be attractive to IXCs in that it is technically comparable, purportedly less expensive, and likely available at an earlier date than the INAD proposal. But, it does not warrant denying INAD's application. It appears that its access service would not be available to all INAD member exchanges. Specifically, 124 INAD member exchanges apparently would not be served by NWB's plan. Even if it installs adjunct devices at all seven of its tandems, 40 INAD member exchanges apparently would not be served. Moreover, given the limited number of access lines available in the member exchanges, the ITCs probably could not justify the other alternative proposed -- blanket end office conversion -- absent large scale demand for equal access service from IXCs.

23. Considering all the circumstances of this case, INAD's network appears to constitute a reasonable means of providing equal access in rural Iowa, and appears to be the only proposal likely to provide equal access services capable of reaching all INAD telephone subscribers. INAD's plan, of course, will generate additional costs, but on the whole we find it will serve the public convenience and necessity, given the alternatives before us.

24. AT&T does not oppose INAD's proposal, but it does recommend the imposition of a condition which would require INAD to file semi-annual reports comparing the amount of capacity INAD leases from INICD with the capacity it actually uses to render equal access service. This condition is essential, AT&T states, to determine whether INAD is cross-subsidizing its affiliate's competitive services through customers of the access service by leasing more capacity than necessary to render the access services.

25. AT&T also contends that the application does not specify whether end users will continue to have unencumbered access to AT&T's operator services and its international network, or whether they will be confronted with additional post-dialing delay when INAD's system becomes operational. In AT&T's view, the introduction of this access service could cause a degradation in service to subscribers. It urges the Commission to seek additional information on this point.[26]

26. In response to the Bureau's inquiry regarding the amount of circuit capacity it plans to lease, INAD explains that it requires at least the same number of circuits that the participating ITCs currently use between their end offices and the 16 toll centers, because all traffic concentration and switching will occur at the centralized switch. It also needs additional capacity (listed under the category of "Toll Center to INS Tandem Circuits" in Exhibit 5 of its application) to allow IXCs to interconnect at one of the 16 toll centers in lieu of its central access tandem switch. To ensure that INAD is not shifting the cost of spare capacity in the high capacity underlying fiber system from INICD's competitive services to INAD's customers, we will require INAD to submit semi-annual circuit usage reports, as requested by AT&T. This is essentially the same condition imposed in *Indiana Switch*, and it will permit interested parties to ascertain the reasonableness of INAD's rates.

27. INAD's potential equipment vendors have declared that their equipment will provide the same quality of service as that rendered by the BOCs' access tandems.[27] However, the record is not complete on this point. One potential supplier gives no specific estimate of post-dialing delay, while another provides other figures for typical toll calls. In view of the fact that INAD has not selected a particular vendor or system, no conclusions can be reached as to whether the benefits of added competition will outweigh added post-dialing delay for all calls. We expect that technological progress in this area will reduce these concerns by the time a final selection is made.[28] In any event, post-dialing delay and the other matters noted by AT&T -- customer denial of access to operator services and international networks -- concern the terms and conditions of service. Parties may wish to address them when INAD files its interstate tariff.

28. *Mandatory Use*. NWB states that it is concerned that INAD's proposal is premised on the assumptions that IXCs, including NWB, would be required to use INAD's system, or to pay as though it were used, for all communication involving INAD member exchanges. NWB also is concerned that the proposal effectively precludes NWB from competing for termination of interstate switched access traffic, because it requires NWB to needlessly route all its interexchange traffic for INAD members' exchanges through the INAD tandem switch at Des Moines. In addition, INAD's proposal precludes NWB from using its existing recording facilities. If this system becomes operational, as proposed, NWB believes its alternatives would be to either (a) absorb INAD-imposed additional costs, (b) pass this expense on to its subscribers, or (c) renegotiate its traffic agreements with the participating exchange carriers,[29] of which (c) is the most practical. It notes, however, such action likely would require it to end its status as the designated carrier and to charge INAD access charges to complete intraLATA toll calls. Inasmuch as intraLATA toll traffic represents 54% of the traffic that originates or terminates in INAD member exchanges, NWB concludes that options (a) and (b) would result in subsidization of INAD's network without benefit to ratepayers or NWB. In short, NWB believes that INAD's proposal is anti-competitive. While it feels that these issues are more appropriately raised in state and federal tariff proceedings, NWB states it raises them now out of concern that INAD may construe any Commission authorization as validating its assumptions and encompassing its service arrangement. *See* NWB comments, p. 8.

29. In its response, INAD alleges that NWB, through its dominant control over intraLATA facilities, threatens to deny INAD members interconnection to NWB toll facilities, to require INAD or its members to pay for NWB's trunk rearrangements, to refuse to use INAD's system or pay INAD for its use, and to demand renegotiation of current traffic agreements with INAD members covering toll compensations. According to INAD, NWB's denial of access by INAD members to toll facilities would severely impede INICD's ability to enter the toll market. Moreover, it urges, NWB's threat to renege on its responsibility as the designated carrier is further evidence of its intent to destroy competition. It cites *Lorain Journal Co., v. United States*, 342 U.S. 143 (1951); *Eastman Kodak Co. v. Southern Photo Materials Co.*, 273 U.S. 359 (1927); *United States v. Colgate & Co.*, 250 U.S. 300 (1919), in support of its position.

30. INAD states that as an access provider it will not compete with NWB in the local transport market or for termination of interstate access traffic. Because most of the transport facilities between the end-offices and the toll centers are jointly provided by its members and NWB, INAD claims NWB will also benefit from the increased usage of its local transport facilities as IXCs increase their service to INAD member exchanges via INAD's system. Further, it asserts, its proposal will not preclude IXCs from using alternative recording facilities.

31. NWB expresses support for INAD's right to offer its proposed services, but feels that INAD has mischaracterized its comments as an attempt to impede INAD's entry into the marketplace. NWB indicates it plans to take no action which would hinder INAD's operation. In fact, it claims that classifying INAD's members as designated carriers should facilitate INAD's operation and negate any complaints concerning NWB using its toll carrier status unfairly. NWB also maintains that INAD would charge carriers using existing facilities to interconnect at existing toll centers the same amount it would charge IXCs for toll traffic terminating at the INAD Des Moines tandem. Under this plan, NWB contends INAD's tandem (1) performs no useful function, (2) is unrelated to the provision of "Centralized Equal Access Service", and (3) would inhibit NWB from competing with INAD for transport of IXCs' terminating toll traffic. In short, NWB reiterates its request that INAD not be permitted to require other carriers to use and pay for services they do not need. ISUB states

"[t]he proposed concentration of traffic and access tandem arrangement should bring benefits of interLATA competition . . . to more of the rural areas of Iowa."[30]

32. *Resolution*. The mandatory use issue is actually two separate issues. First, INAD assumes that NWB will use the system for NWB's intrastate, intraLATA toll calls and that charges assessed upon those calls will recover a large portion of the network's costs, indeed the majority of those costs. NWB, however, expressly objects to paying such charges, which it considers to be needless and burdensome on its local exchange customers. Because this issue involves intrastate calls, it falls within the jurisdiction of the State of Iowa and its agencies. It is our understanding that a proceeding involving this issue is currently underway before the ISUB.[31] However, the decision eventually reached on this issue will have an obvious and substantial effect on our consideration of the INAD proposal. If the appropriate state agencies do not approve INAD's arrangement as proposed here, INAD's assumption that the majority of the network's costs will be recovered from intraLATA toll calls may prove incorrect and the costs assessed on interstate calls could increase substantially. If such a major change in the assumptions underlying the proposal occurred, we would need to review INAD's proposal, as modified to reflect such revised traffic projections.

33. The second aspect of mandatory use concerns terminating toll traffic. INAD's proposal to require that terminating toll traffic use the Des Moines tandem would eliminate the possibility of competition in terminating interstate traffic, which NWB is capable of performing by routing calls from its own tandems direct to INAD exchanges. We do not believe that the mandatory termination requirement for interstate traffic is unreasonable or differs substantially from the normal way access is provided, as both an originating and terminating service by the local exchange company. Given the expected benefits of the network and the fact that independent companies are not subject to MFJ requirements that they allow the interexchange carrier to choose the point of connection, the requirement that terminating interstate traffic transit the Des Moines switch does not appear to be unlawful or unreasonable.

34. *Flat Rate*. Closely related to the traffic routing issue are the rates to be charged for routing. MCI charges that INAD's distance insensitive switched access rate for transport between the Des Moines access tandem and the 16 other network access sites is inconsistent with Sections 69.111(b) and 69.112(c), 47 C.F.R. §§ 69.111(b) and 69.112(c). MCI claims that the Commission's rules and decisions indicate that charges for transport, Common and Dedicated, must be priced on a distance-sensitive basis. *See In the Matter of Petition for Waivers of Part 69 of the Commission's Rules*, filed by the New York Telephone Company and the New England Telephone and Telegraph Company, FCC 86-528 (released January 7, 1987), at para. 47 and n. 53; In the Matter of Annual 1987 Access Tariff *Filings*, Mimeo No. 1251 (released December 24, 1986), at paras. 128 and 129. MCI contends that the Commission has not granted a "comprehensive waiver" permitting the implementation of non-distance sensitive pricing. The waiver the Commission granted[32] enabled the Bell Operating Companies to implement transport charges consistent with the MFJ. Therefore, MCI contends INAD must obtain a waiver to implement its proposed transport rate structure. Although INAD proposes to provide 16 optional network sites for interconnecting with IXCs, NWB claims that IXCs will pay the same transport rate no matter where they interconnect.

35. Applicant believes its distance-insensitive transport rate is permitted by the waiver of Sections 69.1(b), 69.3(e), 69.4(b)(7), 69.4(b)(8), 69.101, 69.111 and 69.112 of the rules granted in the *Transport Waiver Order*, based on the following language:

> [f]or the reasons set forth below we grant a waiver for a period of one year ending December 31, 1984, and shall permit all telephone companies during that year to impose charges to recover their transport costs that do not comply with the applicable sections of Part 69 of our rules.

Transport Waiver Order at para. 1. According to INAD, this waiver has been extended indefinitely.[33] In addition, Applicant claims that MCI's argument that all switched transport charges must include a cost based and distance sensitive element that reflects the airline distance over which the transport is provided was rejected by the Commission in the *Transport Waiver Order*, at paras. 127 and 128. INAD explains that it chose a distance insensitive rate structure because it will minimize the number of POP relocations by IXCs occasioned by its centralized equal access service. It further explains that its rate structure prevents "any impact on the current meet point billing arrangements for local transport and the NECA traffic-sensitive pool." INAD defends its distance insensitive switched transport rate with the explanation that the proposed charge of 0.0161 per access minute reflects the cost of the underlying fiber optic network, which is more usage sensitive than distance sensitive. INAD claims that because its transport rate is consistent with the Commission's access policies and the *Transport Waiver Order* it will provide non-dominant IXCs the same choice of equal access connections currently available to AT&T and NWB at no greater cost. However, it adds, should the Bureau decide INAD must obtain a waiver to impose its distance insensitive rate, it will submit such a request prior to filing its interstate tariff.

36. *Resolution*. INAD's proposed rate scheme is inconsistent with Sections 69.111(b) and 69.112(c) of the rules. These rules require that Common and Dedicated transport charges be predicated upon a distance factor which reflects the airline distance between the Class 5 or end office switch that serves an end user and the entry switch (Common), or a distance factor that reflects the airline distance between the entry switch and interexchange facilities (Dedicated). Although the Commission has waived these requirements in particular circumstances, its waiver cannot be taken as a broad acceptance of any rate structure. In the *Transport Waiver Order*, *supra*, at pp. 549-50, the Commission noted that even though it had waived the provisions of the above cited rule sections, access tariff submissions must comply with its cost support and other tariff requirements.

37. The transport rate structure must meet the test of reasonableness, which ordinarily means that it must reflect costs. If transport costs vary with respect to distance, the transport rate structure should also ordinarily be distance-sensitive. Termination or modification of the existing rule waiver would of course impose distance-sensitive transport rates as a matter of rule. The limited information submitted on this issue does not provide an adequate basis for

reaching a conclusion, and the issue is one which is generally addressed in the tariff review process, not in facilities authorizations. Accordingly, parties may wish to raise it when INAD files its interstate tariff.

CONCLUSION

38. INAD's proposed network has the potential for implementing in rural Iowa the important Commission goal of making available more competitive, varied, high quality interstate services. Although the network INAD would lease will increase the cost of access, we judge that the benefits of added competition should outweigh these costs, especially in view of the comprehensive coverage of the network. The alternative approach being implemented by NWB may present advantages, but it lacks the coverage of the INAD plan and is not presented as a fully developed alternative. Indeed, NWB does not seek denial of INAD's proposal.

39. Nevertheless, we believe that our approval of the INAD proposal can only be granted with certain conditions, in light of ongoing state proceedings and questions which must be more fully addressed by INAD. If the State of Iowa and its agencies take actions which have the effect of changing important assumptions in INAD's application, then the basis of this decision will be undermined. Accordingly, we will condition our approval on the approval by appropriate state agencies of the INAD network without modifications that materially affect the relative amounts of inter- and intra-state usage. In the interstate tariff proceeding, we expect INAD to provide final information on the technical characteristics and identity of its switch, including reliable measurements of post-dialing delay and certification of any effects of the network upon access to international and operator services. Thus, we approve the INAD proposal, subject to verification by INAD in a filing subsequent to resolution of pending state issues, that the projections and assumptions upon which the proposal is based are accurate.

40. Accordingly, IT IS ORDERED, that the application of Iowa Network Access Division of authorization under Section 214 of the Communications Act of 1934 to lease transmission facilities in the State of Iowa IS GRANTED.

41. IT IS FURTHER ORDERED, that grant of the application provided for herein IS SUBJECT TO THE FOLLOWING CONDITIONS:

(1) That Iowa Network Access Division report, in writing to the Chief, Domestic Services Branch, Common Carrier Bureau, on a semi-annual basis (February 1 and August 1), the amount of capacity it has leased from Iowa Network Interexchange Carrier Division during the previous six month period (July-December, January-June) and compare that with the amount of capacity that is actually furnished to all IXCs in the provision of interstate access services and

(2) That the State of Iowa, through the appropriate state agencies, issue the necessary approvals at the conclusion of any state proceedings relating to the proposal in the subject application without modifications that materially affect the relative amounts of inter- and intra-state usage of the system.

42. This Order is issued under Section 0.291 of the Commission's Rules, 47. C.F.R. § 0.291, and is effective upon its release. Failure of Iowa Network Access Division to decline the authorization as conditioned within thirty-one days from the released date will be construed as formal acceptance.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] On September 29, 1987, INAD requested that the Commission dismiss NWB's September 24, 1987 submission. According to INAD, the Commission in its August 31, 1987 letter to NWB and INAD prohibited any additional submissions after September 14, 1987 by INAD and NWB. NWB maintains its September 24, 1987 filing was merely to report its reformated rates using INAD methodology. Because the material filed by NWB does not appear to prejudice INAD in any way and because the filing provides a more complete record, INAD's request is denied.

[2] Application at p.1.

[3] The application discloses that INAD and INICD are operating divisions of Iowa Network Services, Inc., which in turn is jointly owned by the 136 independent telephone companies participating in the proposed project.

[4] Through these facilities INICD would provide competitive interexchange services.

[5] Engineering and Operations in the Bell System, pp. 691, 695, (Bell Laboratories, 1980) defines a tandem switch as an intermediate switch used to interconnect local and toll offices. A toll center is defined as a Class 4 office in the hierarchy of toll switching offices, the lowest level toll office. (A toll office is a switching office where trunks are interconnected to handle and record charges associated with long distance, or toll calls.) "Homing" refers to directing toll calls to a specific toll center or Class 4 office. Exchange Carrier Association Tariff F.C.C. No. 1, pp. 157-159, provides the following definitions:

> Feature Group B access provides trunk side access to telephone company end office switches with an associated uniform 950-0XXX or 950-1XXX access code for the customer's use in originating communications from and terminating communications to an IXC's service or a customer-provided interstate communications capability.
>
> Feature Group C access provides trunk side access to telephone company end office switches for the customer's use in originating and terminating communications.
>
> Feature Group D access provides trunk side access to telephone company end office switches with an associated uniform 10XXX access code for the customer's use in originating and terminating communications.

Feature Group C currently is available only to AT&T Communications. Feature Group D provides equivalent quality access to multiple IXCs.

[6] This request is denied because future additions to its network are likely to fall within the monetary limitation specified in Section 63.03 of the rules, 47 C.F.R. § 63.03. By this section, INAD may avail itself of our informal application procedures.

[7] NWB Comments, p. 15.

[8] Memorandum Opinion, Order and Certificate, File No. W-P-C-5671, Mimeo No. 3652, (released April 10, 1986), *aff' d on recon.*, 1 FCC Rcd 634 (November 14, 1986). Indiana Switch's judgment that Section 214 application was necessary was not challenged, and its affiliate stated it intended to provide interstate and intrastate interLATA services.

[9] The Communications Act provides, at 47 U.S.C. § 153(e) that:

> "Interstate communication" or "interstate transmission" means communication or transmission (1) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (2) from or to the United States to or from the Canal Zone insofar as such communication or transmission takes place within the United States, or (3) between points within the United States but through a foreign country; but shall not, with respect to the provisions of title II of this Act (other than Section 223 thereof), include wire or radio communication between points in the same States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission. [footnotes omitted]

[10] *See also* General Telephone, para. 5, *supra*, at 458; CATV, 2 FCC 2d 725, 794 (1966); Idaho Microwave, Inc. v. FCC, 352 F.2d 729 (D. C. Cir. 1965); Ward v. Northern Ohio Telephone Co., 300 F.2d 816 (6th Cir.), *cert. denied*, 371 U. S. 820 (1962); Pacific Telatronics, Inc., 37 FCC 1163 (1964).

[11] In *Southwestern Bell Telephone Company* (Southwestern Bell), 6 FCC 2d 529 (1938), the Commission observed that:

> We are unable to bring ourselves to adoption of the theory that physical continuity of interstate connection is the controlling test. Wires which are not welded, or otherwise continuously and permanently connected, may readily be connected by hand or by automatic device, and when they are connected by switch or otherwise so as to form a continuous communication channel extending across State lines, over or by means of which interstate messages are transmitted, for all practical communication purposes the effect is the same as if the switch were removed and the end of the wire permanently connected.

Southwestern Bell at p. 533.

[12] Although INAD principally plans to interconnect with IXCs to provide its interstate services, it is not exempt from Section 214 under Section 2(b)(2) of the Act, 47 U. S. C. § 152(b)(2), which defines connecting carriers. Section 2(b)(2) reads:

> Except as provided in Section 224 and subject to the provision of Section 301, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to . . . (2) any carrier engaged in interstate of foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier. . . .

In addition to leasing a line that crosses state boundaries, INAD will be interconnecting with its corporate interexchange affiliate, INICD, as well as other IXCs, to provide the origination and termination of interstate calls. INICD states it will be subject to forbearance when it commences operation as an interexchange carrier and is, therefore, not required to file for Section 214 authorization and is not regulated by the Commission. This represents an intention by INICD to provide interstate services. *See also* Declaratory Ruling on Section 2(b)(2), 2 FCC Rcd 1750 (1987); Continental of Virginia, 2 FCC Rcd 5982 (1987).

[13] In view of our determination that this matter is within our jurisdiction, NWB's request that we refer this proposal to ISUB or defer action until ISUB acts is denied.

[14] Policy and Rules Concerning Rates and Facilities Authorizations for Competitive Carrier Services (CC Docket No. 79-252), Notice of Inquiry and Proposed Rule Making, 77 FCC 2d 308 (1979), First Report and Order, 85 FCC 2d 1 (1980), Further Notice of Proposed Rule Making, 84 FCC 2d 445 (1981), Second Report and Order, 91 FCC 2d 59 (1982), *recon.*, FCC No. 83-69 (released March 21, 1983), Second Further Notice of Proposed Rule Making, FCC No. 82-187 (released April 21, 1982), Third Further Notice of Proposed Rule Making, Mimeo No. 33547 (released June 14, 1983), 48 Fed. Reg. 28,292 (June 21, 1983), Third Report and Order, Mimeo No. 012 (released October 6, 1983), 48 Fed. Reg. 46,791 (October 15, 1983), Fourth Report and Order, 95 FCC 2d 554 (1983), Fourth Further Notice of Proposed Rule Making, FCC No. 84-82 (released March 22, 1984), 49 Fed. Reg. 11,856, (March 28, 1984), Fifth Report and Order, FCC No. 84-394 (released August 27, 1984), 49 Fed. Reg. 34,824, September 4, 1984, Sixth Report and Order, FCC No. 84-566 (released January 4, 1985), 50 Fed. Reg. 1215 (January 10, 1985).

[15] A carrier affiliated with an exchange telephone company is a carrier that is owned (in whole or part) or controlled by, or under common ownership (in whole or part) or control with, an exchange telephone company. Fifth Report and Order, 98 FCC 2d 1191, 1198 (1984).

[16] Although NWB refers, without citation, to a "practice" to exclude from the definition of an interstate line all lines "below an exchange carrier access tandem switch," it cites no authority for the practice and, in fact, we are unaware of it. While the proviso of Section 214(a) exempts, "local, branch or terminal lines not exceeding 10 miles in length," the network for which INAD seeks authorization is several hundred miles in length.

[17] A "designated carrier" is defined in the current Iowa exchange carrier toll traffic agreement (which includes INAD members) covering both intrastate and interstate intraLATA traffic as "an exchange carrier chosen to act as an interexchange carrier for . . . intraLATA toll services covered by this agreement." NWB Comments, n.3. Currently, NWB acts as the designated carrier.

[18] To further support its proposal, INAD states that converting all of its members' end offices to equal access and employing 16 tandems at the toll centers as proposed by NWB would result in a cost to the IXCs of 2.08 per hundred access minutes, compared to1.81 per hundred access minutes for NWB's arrangement using seven tandems and each end office converting to equal access. Its proposal would cost, it claims, 1.61 per hundred access minutes. Its net cost would be even less if the value of traffic concentration,0.74 per hundred access minutes, is included (substracted), states INAD.

[19] Initial Notice, 67 FCC 2d 757 (1978); Supplemental Notice of Inquiry and Proposed Rule Making, 73 FCC 2d 222 (1979); Second Supplemental Notice of Inquiry and Proposed Rule Making, 77 FCC 2d 224 (1980); Report and Third Supplemental

Notice of Inquiry and Proposed Rule Making, 81 FCC 2d 177 (1980); and Fourth Supplemental Notice of Inquiry and Proposed Rule Making, 90 FCC 2d 135 (1982).

[20] This service is defined as including "services and facilities provided for the origination or termination of any interstate or foreign telecommunication." *See* Section 69.2(a), 47 C.F.R. § 69.2(a).

[21] The Modification of Final Judgment (MFJ), United States v. American Telephone and Telegraph Co., 552 F. Supp 131 (D. C. Cir. 1982), *aff' d sub nom.* Maryland v. United States, 460 U. S. 1001 (1983).

[22] United States v. GTE Corporation, Civ. Action No. 83-1298 (D.D.C. December 13, 1984).

[23] 100 FCC 2d at 874.

[24] *Id.*

[25] 100 FCC 2d at 878.

[26] AT&T also questioned INAD's inclusion of voice grade special access in its proposal, but in its September 14, 1987 response to the Bureau's information request, INAD deleted its proposal to provide special access.

[27] *See* INAD September 14, 1987 Response, Attachment B.

[28] As noted in the U.S. West tariff order, Mountain States Telephone and Telegraph Company and Northwestern Bell Telephone Company, Tariff F.C.C. No. 1, Transmittal No. 104, DA 87-1887 (released December 29, 1987), we have concerns about the amount of post-dial delay occurring when equal access is provided through the use of adjunct devices.

[29] The agreement in effect allows NWB, as the designated carrier, to establish rates and file tariffs for intraLATA toll calls as well as define what compensation each carrier that participates in a toll call receives. This agreement expires December 31, 1988. NWB reasons that the agreement must be renegotiated whether INAD becomes operational or not. Should the terms of the current agreement remain in effect after INAD commences operation, NWB contends that non-INAD member subscribers would incur a rate increase in return for which they receive no additional benefits.

[30] ISUB Comments at 2.

[31] Order Docketing Case, State of Iowa Utilities Division, Docket No. RPU-88-2 (TF-87-426), January 15, 1988.

[32] American Telephone and Telegraph Company (Transport Waiver Order), 94 FCC 2d 545 (1983).

[33] MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, 50 Fed. Reg. 9633 (March 11, 1985) at para. 1.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Supplemental Comments
in the City of Brookings
Remand Proceeding

ORDER

Adopted: February 26, 1988 **Released: March 2, 1988**

By the Chief, Common Carrier Bureau:

1. On January 21, 1988, the ICORE local exchange companies requested that supplemental comments be permitted in the *City of Brookings* [1] remand proceeding. In this Order, ICORE's request for a supplemental round of comments is granted, but such comments are to be limited to issues of fact or methodology raised in the replies. Supplemental comments may be filed on or before April 4, 1988.

2. On October 27, 1987,[2] the Commission requested comments and replies on, *inter alia*, data that the Commission had requested in response to the *City of Brookings* remand with comments due on or before December 5, 1987 and reply comments due on or before January 5, 1988. On December 4, 1987, an extension of time to January 5, 1988 for comments and February 3, 1988 for reply comments was granted in response to a request by ICORE on November 30, 1987. [3] On January 13, 1988, the National Exchange Carrier Association, Inc. (NECA) filed a motion requesting that the time for filing reply comments be extended to March 4, 1988, which the Bureau granted.[4] On January 21, 1988, ICORE filed a reply to NECA's motion for an extension of time. ICORE requests that the pleading cycle be modified to allow interested parties thirty days to respond to reply comments filed in this proceeding.

3. Under the Commission's procedural rules, the reply comments phase would terminate the pleading cycle in this proceeding.[5] Here, however, ICORE contends that important issues may be raised in the reply comments that will merit further comment. In ICORE's view, NECA's failure to file comments and NECA's assertion that it will require the assistance of outside statistical experts to prepare reply comments,[6] suggests to ICORE that NECA intends to submit its views in reply comments to evade review of its comments by interested parties.[7]

4. Although it is not the policy of the Commission to grant requests of this sort routinely,[8] the presence of additional, non-repetitive comment would result in a more complete factual record that holds the prospect of serving the public interest more fully. We have thus decided to grant ICORE's request and permit interested parties to file supplemental comments on or before April 4, 1988. As indicated above, these supplemental comments are to be strictly limited to questions of fact or methodology that are raised in the reply comments.

5. THEREFORE, IT IS ORDERED, that supplemental comments to the reply comments in the *City of Brookings* Remand Proceeding may be filed on or before *April 4, 1988*.

6. Accordingly, IT IS HEREBY ORDERED, pursuant to Sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j) and 155(c), and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, that the motion of ICORE, described in paragraph 1, IS GRANTED to the extent described in paragraph 4 *infra*, and is otherwise DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] *City of Brookings Municipal Telephone Company et al.* v. *Federal Communications Commission*, 822 F.2d 1153, 1172 (D.C. Cir. 1987).

[2] Comment Dates Set on Remand of Average Schedule Revisions, Public Notice, DA 87-1528 (released Oct. 27, 1987).

[3] Extensions of Time for Filing Comments in the City of Brookings Remand Proceeding, Order DA 87-1761 (released Dec. 4, 1987).

[4] Extension of Time for Filing Comments in the C ity of Brook ings Remand Proceeding, Order DA 88-52 (released Feb. 1, 1988).

[5] See 47 C.F.R. § 1.45(c).

[6] ICORE petition at 2.

[7] ICORE petition at 2.

[8] Section 1.46(a) of the Commission's Rules, 47 C.F.R. § 1.46(a).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: March 14, 1988

FCC INTERIM PROCEDURE FOR THE SPECIFICATION OF GEOGRAPHIC COORDINATES

Latitude and longitude coordinates (coordinates) are being changed slightly for all points in the United States. This is a result of the 1927 North American Datum (NAD27), on which North American coordinates are based, being replaced with the more accurate 1983 North American Datum (NAD83). This activity is authorized by the Office of Management and Budget and is being overseen by the Federal Geodetic Control Committee. Actual calculations are being performed by the National Geodetic Survey (NGS).

The Commission will eventually convert to use of NAD83 to maintain accuracy in our records and to maintain consistency with other government agencies and foreign administrations. The conversion to NAD83 will affect coordinates used to describe communication sites on authorizations, notifications, forms, rules, data bases, etc.

Current topographic maps such as the 7.5-minute quadrangle maps published by the Geological Survey which are often used by applicants to determine the coordinates of their site, specify NAD27 in the lower left corner. At some point in the near future, Geological Survey will begin to issue maps based on NAD83. Initially, dual-sided (NAD27/NAD83) maps will be issued. Eventually, only NAD83 maps will be available. The satellite-based Global Positioning System (GPS) is already programmed with NAD83. Site coordinates determined by use of GPS receivers thereof already reflect NAD83.

In order to prevent intermixing of data using two different datums the following procedures will be in effect until further notice:

Applicants are instructed to furnish coordinates based on NAD27 datum on all submissions. Failure to do so could delay the processing of an application.

Applicants who have filed applications with coordinates based on the NAD83 datum must provide NAD27 coordinates to the appropriate Commission licensing bureau.

Until further notice, the Commission will continue to specify NAD27 coordinates in its data bases, authorizations, notifications, forms, rules, etc.

The Commission will issue further guidance on the conversion to NAD83 as more information becomes available. For further information, contact Don R. Precure at (202) 653-8152.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TRT INTERNATIONAL, INC. File No. I-T-C-88-046

Application for Authority to Acquire and Operate Facilities for Provision of "Common Gateway" Services Between the United States and the Federal Republic of Germany

MEMORANDUM OPINION, ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: February 26, 1988 **Released: March 3, 1988**

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On December 4, 1987, TRT International, Inc. (TRT) filed an application, pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire and operate sixty (60) voice grade satellite circuits and associated connecting facilities for the provision of switched voice services between the United States and the Federal Republic of Germany (F.R.G.) and points beyond. The application is unopposed.[1] For the reasons discussed below, we grant TRT's application to provide direct switched voice service between the U.S. and the F.R.G. and beyond.

II. TRT APPLICATION

2. TRT's application states that the requested facilities will be used to establish a so-called "common gateway" for the provision of international switched voice services between the U.S. and the F.R.G. to other U.S. carriers at low, cost-based rates and pursuant to other terms and conditions that will enable TRT's carrier-customers to offer switched voice services to the F.R.G. that are fully competitive with the offerings of the larger switched voice carriers that have direct facilities to the F.R.G. The application also states that the charges for end-to-end service will be contained in the tariffs filed by TRT's carrier-customers. Finally, TRT forecasts that switched voice traffic between the U.S. and the F.R.G. will continue to grow at an annual rate of fifteen percent.

III. DISCUSSION

3. Section 214 provides the Commission with the authority to require that carriers obtain a certificate that the "present or future public convenience and necessity require or will require the construction or operation . . . " of a new line or an extended line.[2] In the United States, we refer to commercial arrangements for the joint provision of international service as operating agreements. TRT styles its application, however, as one seeking authority for facilities to provide a so-called "common gateway." The rubric "gateway" is a term that has been used by the Deutsche Bundespost to describe its commercial arrangements with U.S. carriers; it has no significance under U.S. law. We do not believe that TRT's use of this terminology, however, although not in accordance with standard practice, makes TRT's application for Section 214 authority to acquire and operate international facilities procedurally defective. Rather, we will treat TRT's application for authority to operate a so-called "gateway" as a Section 214 application to acquire and operate facilities for the provision of direct switched voice service between the U.S. and the F.R.G. and beyond.

4. As discussed in companion orders,[3] we believe that the entry of additional U.S. voice carriers to the U.S.-F.R.G. market will increase customer choice and promote the public interest. We also find that TRT is qualified to provide switched voice service between the two countries. As a result, we determine that the present and future public convenience and necessity will be served by the grant of the TRT application to provide direct switched voice service between the U.S. and the F.R.G. In particular, we determine that there is no shortage of facilities between the two countries, and agree with TRT that market growth should continue for U.S.-F.R.G. switched voice services.

IV. ORDERING CLAUSES

5. Upon consideration of the application and in view of the foregoing, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct voice service to the Federal Republic of Germany by TRT.

6. Accordingly, IT IS ORDERED that application File No. I-T-C-88-046 IS GRANTED, and TRT is authorized to:

a. lease from Comsat and operate sixty (60) voice-grade satellite circuits between AT&T's international multi-purpose earth station at Etam, West Virginia and an INTELSAT AOR satellite to connect with matching facilities furnished by TRT's correspondent in the F.R.G.;

b. lease from AT&T and operate 60 voice-grade circuits in the Etam earth station;

c. lease and operate 60 voice-grade circuits to connect its New York City technical operating center with the Etam earth station; and

d. use these facilities to provide switched voice service between the U.S. and the F.R.G. and beyond.

7. IT IS FURTHER ORDERED that in order to provide the Commission with an opportunity to review the terms and conditions of any TRT-DBP operating agreement for voice service between the U.S. and the F.R.G., TRT must file any such operating agreement with the Commission within 30 days after the completion of the agreement.

8. This authorization is effective on its release date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

9. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock Chief, Common Carrier Bureau

FOOTNOTES

[1] ALC Communications Corporation (ALC) filed comments on TRT's application and the application of US Sprint, granted by companion order today in File No. I-T-C-88-015. We addressed these comments in US Sprint, DA 88-290. In addition, TRT and FTCC filed separate motions to consolidate their applications with that of US Sprint. On February 25, 1988, TRT filed a petition for leave to withdraw its motion to consolidate. We granted TRT's petition and denied FTCC's motion in US Sprint, DA 88-290.

[2] 47 U.S.C. Section 214.

[3] MCI Telecommunications Corporation, I-T-C-88-005, DA 88-289, US Sprint Communications Company, I-T-C-88-015, DA 88-290, FTC Communications,Inc., I-T-C-88-058, DA 88-291.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI COMMUNICATIONS CORPORATION — File No. I-T-C-88-005

Application for authority to acquire and operate facilities for direct service to the Federal Republic of Germany

MEMORANDUM OPINION, ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: February 26, 1988 **Released: March 3, 1988**

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On October 6, 1987, MCI Communications Corporation (MCI) filed an application requesting authority, pursuant to Section 214 of the Communications Act of 1934, to acquire and operate eighty-two voice-grade satellite circuits as well as appropriate domestic connecting facilities for direct service between the U.S. and the Federal Republic of Germany (F.R.G.).[1] On November 20, 1987, TRT Telecommunications Corporation (TRT) filed a Conditional Petition to Deny the MCI application. In this order, we grant the MCI application and deny TRT's request.

II. SUMMARY OF THE PLEADINGS

A. *MCI's Application*

2. MCI's application is for facilities to provide direct switched voice service between the U.S. and the F.R.G. MCI seeks to lease from the Communications Satellite Corporation (Comsat) and to operate eighty-two voice-grade satellite circuits between the Roaring Creek, Pennsylvania international multi-purpose earth station owned and operated by AT&T and an appropriate satellite over the Atlantic Ocean connecting with similar circuits between the satellite and an earth station in the F.R.G. furnished by the DBP.[2] MCI proposes to connect its West Orange, New Jersey operating office with the Roaring Creek facilities via eighty-two voice-grade circuits leased from AT&T at that carrier's tariffed rates. MCI states that these facility requirements represent MCI's initial facilities requirements for operating switched voice service between the U.S. and the F.R.G., and projects that it will require up to 355 circuits by year-end 1988, 521 circuits by year-end 1989, and 547 circuits after three years. MCI also states that charges for its service will be those reflected in MCI's present and future tariff filings.

3. MCI observes that grant of its application will serve the public interest and further the Commission's pro-competitive policies by bringing the benefits of alternative services by new entrants to the international marketplace. MCI asserts that this competition will be beneficial because it will spur innovation and efficiency, lead to more and better services, and stimulate further customer demand and usage. MCI also states that its proposed service offering will make more efficient use of MCI's existing facilities. Finally, MCI projects an annual growth rate of approximately 8.7 percent in U.S.-F.R.G. switched voice traffic and anticipates that its share of this traffic will be approximately 6.7 percent, 11.5 percent and 13.0 percent, respectively, of the projected 1988, 1989 and 1990 total U.S. - F.R.G. switched voice market.

B. *TRT's Conditional Petition to Deny*

4. TRT filed a Conditional Petition to Deny MCI's application. This pleading urges the Commission to deny MCI's application unless the Commission conditions the grant of the application on MCI's agreement to permit TRT access to MCI's F.R.G. service at rates that are as favorable as those which MCI gives to any other carrier. TRT alleges that it was prejudiced by "last-minute" revisions to the proposed arrangements with MCI that TRT had believed would allow TRT to compete effectively using MCI's facilities to the F.R.G. It asserts that MCI made such changes after MCI was assured that it would be granted an operating agreement with the F.R.G.[3] TRT further states its understanding that MCI may be making arrangements to allow one or more other U.S. carriers access to MCI's F.R.G. service at preferential rates, terms and conditions.[4]

C. *MCI's Opposition to Conditional Petition to Deny*

5. MCI opposes TRT's petition. MCI argues that all common carriers already have the obligation, under the Communications Act, to refrain from unreasonable discrimination among customers. MCI states that it will continue to abide by this obligation. MCI observes that, as a result, the relief sought by TRT is redundant and the condition TRT seeks to impose on MCI's authorization is unnecessary.[5]

D. *TRT's Reply*

6. TRT replies that the potential for discrimination inherent in MCI's operation of its F.R.G. facilities and the difficulties TRT has experienced in dealing with MCI necessitate imposition of the conditions it seeks. TRT suggests that such discrimination, in the absence of appropriate conditions on MCI's Section 214 authority, might take the form of an MCI requirement that carriers route their non-F.R.G. traffic via MCI to qualify for a low F.R.G. rate. TRT also states that it might have difficulties in seeking relief from the Commission if it is relegated to its ordinary remedies under the Communications Act, where TRT would face the burden of convincing the Commission to institute proceedings to force MCI to offer TRT access at equitable rates.[6]

III. DISCUSSION

7. Section 214 provides the Commission with the authority to require that carriers obtain a certificate that the "present or future public convenience and necessity requires or will require the construction, or operation . . . " of a new line or an extended line.[7] In this Order, we find that MCI is qualified to provide direct switched voice service to West Germany and that the present and future public convenience and necessity will be served by the grant of MCI's application. In particular, we recognize that initiation of service by MCI into the West German market will give U.S. consumers an additional choice[8] in selecting a service provider.[9] The grant of MCI's Section 214 application is fully consistent with our policy of promoting open entry in international telecommunications. As a result, we cannot agree with TRT's assertion that denial of the MCI application would serve the public interest. Moreover, we do not agree with TRT that the DBP offered MCI and US Sprint operating agreements as a result of a DBP "belief" that the U.S. government favored the selection of one carrier over another. To the contrary, this Commission has stated, and will continue to state, that we have a strong interest in, and will support the efforts of, all U.S. voice carriers that seek to enter the U.S.-F.R.G. voice market.[10]

8. The operating agreement before us is a commercial arrangement arrived at by MCI and the DBP. We recognize, however, that we have an obligation to ensure that foreign administrations do not obtain unduly favorable terms and conditions from U.S. carriers by setting U.S. carriers against one another in a process known as "whipsawing." Traditionally, we have done this through the application of our international settlements policy, which addresses the terms and conditions under which U.S. carriers deal with their foreign correspondents in conjunction with their joint provision of international telecommunications services.[11] In this regard, we note that the MCI-DBP operating agreement provides for use of the existing accounting rate -- that is, 1.2 SDRs per minute -- in accordance with our uniformity requirements.

9. We are concerned, however, that the provision in the MCI-DBP operating agreement for MCI to provide 13% of U.S.-F.R.G. traffic could serve as a barrier to entry for additional U.S. carriers. As a result, we will treat the commitment by MCI to establish a 13% market share of outbound U.S.-F.R.G. traffic by year-end 1989 as a target rather than as a contractual requirement. We believe that the use of such a provision by the DBP to terminate the MCI-DBP direct links would be a matter of the utmost concern to this Commission and would invoke a need for immediate consultations and appropriate remedies. In addition, we note that return flow traffic will not begin until at least six months after the initiation by MCI of outbound service. Since the receipt of inbound traffic and revenues is important to the full development of a correspondent relationship and the growth of competition in the U.S. market, we anticipate that this six month waiting period will not be extended by the DBP absent extraordinary circumstances. With these clarifications, and MCI's express recognition of its nondiscrimination obligations under the Act, we do not believe that the MCI application raises any unique discrimination concerns that warrant the imposition of additional regulatory requirements. Therefore, we deny TRT's request for the imposition of conditions on MCI's provision of voice service to the F.R.G.

IV. ORDERING CLAUSES

10. Upon consideration of the application and in view of the foregoing, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct voice service to the Federal Republic of Germany by MCI.

11. Accordingly, IT IS ORDERED that application File No. I-T-C-88-005 IS GRANTED, and MCI is authorized to:

a. lease from Comsat and operate eighty-two (82) voice-grade satellite circuits between the Roaring Creek, Pennsylvania earth station and an appropriate satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and an earth station in the F.R.G. furnished by DBP;

b. lease from the American Telephone and Telegraph Company and operate 82 voice-grade circuits in the Roaring Creek earth station;

c. lease and operate 82 voice-grade circuits between the Roaring Creek earth station and MCI's West Orange, New Jersey operating office; and

d. use these facilities to provide switched voice service between the U.S. and the F.R.G. and beyond.

12. IT IS FURTHER ORDERED that the Conditional Petition to Deny filed by TRT is hereby DENIED.

13. This authorization is effective on its release date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

14. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock Chief, Common Carrier Bureau

FOOTNOTES

[1] On January 7, 1988, MCI provided the Commission with a copy of its operating agreement with the Deutsche Bundespost (DBP).

[2] On February 3, 1988, MCI amended its application to reflect that the Roaring Creek earth station, formerly owned by the Earth Station Ownership Committee and operated by Comsat, is now owned and operated by AT&T. *See* American Telephone and Telegraph Co., 2 FCC Rcd 6635 (1987).

[3] TRT Petition at 3-4. TRT also contends that its own qualifications to provide U.S.-FRG switched voice service were "obscured" by representatives of the U.S. government and alleges that this led the DBP to believe the U.S. favored selection of MCI over TRT for one of the two additional operating agreements the DBP has offered for the provision of switched voice service between the U.S. and West Germany.

[4] *Id.* at 4.

[5] MCI Opposition at 3. MCI further responds that TRT has provided no factual basis to support an allegation that grant of MCI's application would be inconsistent with the public interest, and moreover has not alleged that MCI is unfit to obtain the authority it seeks and that grant of its application would harm the public interest. MCI states that there is no rationale upon which Commission denial of a pending application can be justified absent an allegation, supported by a documented factual demonstration, of damage to the public interest which is likely to result from approval of an application. *Id.* at 2. MCI also suggests that TRT is abusing Commission process by raising claims that are not supported by facts and seeking relief that is repetitive and unnecessary to delay implementation of MCI's service. *Id.* at 4. MCI believes such delays will affect adversely responsiveness to the needs of end-users and carrier revenues. *Id.* at 3.

[6] TRT also contends that the Commission must grant MCI's application in a manner that best serves the public interest. Therefore, TRT asserts, MCI's observation that TRT has not alleged MCI's unfitness or that grant of MCI's application would harm the public interest begs the question of whether the public interest is better served by grant of MCI's application under the conditions sought by TRT. *Id.* at 2.

[7] 47 U.S.C. Section 214.

[8] For a considerable period of time, AT&T has been the only provider of switched voice service to the FRG.

[9] As discussed in the US Sprint companion order, we will continue to support the efforts of U.S. carriers to persuade the DBP to offer operating agreements to additional U.S. voice carriers, and thereby provide all U.S. consumers with an unfettered opportunity to communicate with consumers in the Federal Republic of Germany. *See* US Sprint Communications Company, I-T-C-88-015, DA 88-290.

[10] *See* US Sprint Communications Co., I-T-C-88-015, DA 88-290, TRT International, Inc., I-T-C-88-046, DA 88-288, FTC Communications, Inc., I-T-C-88-058, DA 88-291.

[11] *See, e. g.*, Implementation and Scope of International Settlements Policy for Parallel International Communications Routes, *Report* and Order, CC Docket 85-204 (released February 7, 1986), Order on Reconsideration, 2 FCC Rcd. 1118 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

US SPRINT COMMUNICATIONS COMPANY — File No. I-T-C-88-015

Application for authority to acquire and operate facilities for direct service to the Federal Republic of Germany

MEMORANDUM OPINION, ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: February 26, 1988 **Released: March 3, 1988**

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On October 27, 1987, US Sprint Communications Company (US Sprint) filed, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. Section 214, and Section 63.01 of the Commission's Rules, 47 C.F.R. Section 63.01, an application seeking authority to acquire and operate facilities for the provision of its authorized common carrier services, including switched voice service, between the United States and the Federal Republic of Germany (F.R.G.) and points beyond.[1] The application is unopposed.[2] We grant US Sprint's application, subject to certain conditions discussed below.

II. SUMMARY OF FILINGS

A. *US Sprint Application*

2. The US Sprint application is for facilities that will be used to provide direct service between the U.S. and the F.R.G. Specifically, US Sprint seeks to lease from the Communications Satellite Corporation (Comsat) and operate sixty voice-grade satellite circuits between US Sprint's international multi-purpose earth station at Franklin, New Jersey and the theoretical midpoint of the INTELSAT Atlantic Ocean Region satellite connecting with matching facilities furnished by US Sprint's correspondent in the F.R.G., the DBP. US Sprint proposes to connect its New York City technical operating center and the Franklin, New Jersey earth station via its fiber optic network.[3] US Sprint states that these channel requirements represent its initial facilities requirements for service between the U.S. and the F.R.G., and projects that it will require up to 260 satellite circuits by year-end 1988, 489 satellite circuits by year-end 1989, and 652 satellite circuits after three years. US Sprint also states that it intends to include its rates for services to the F.R.G. in its Tariffs F.C.C. Nos. 1 and 2.

3. US Sprint observes that grant of its application will serve the public interest and further the Commission's pro-competitive goals by allowing US Sprint to bring benefits of competition to the international marketplace. US Sprint asserts that these benefits include lower priced, high quality service, broadened customer choice, more efficient use of existing telecommunications facilities and resources, and price and service innovation. US Sprint also asserts that additional competition in the provision of service between the U.S. and the F.R.G. is feasible. It provides, in Appendix A to its application, projections of an average rate of growth in traffic of 11.3 percent for the years 1988 through 1990. It projects that its share of this traffic will average 4.4 percent in 1988, 10.4 percent in 1989 and 12.8 percent in 1990.

B. *TRT's Petition to Deny*

4. TRT asserts that the DBP did not agree to operate with US Sprint directly for the transmission only of US Sprint's International Message Telecommunications Service (IMTS) traffic to the F.R.G. Rather, TRT suggests, US Sprint has agreed to a so-called "common gateway" arrangement as envisioned by the DBP. TRT states that the present refusal of the DBP to consider additional direct operating agreements with U.S. carriers until they obtain a thirteen percent penetration imposes an obligation on the Commission to select the so-called "common gateway" operator best able to assure all U.S. carriers fair access to the F.R.G. TRT believes that it is at least as qualified as US Sprint and that, as primarily a carrier's carrier, unlike US Sprint it would not compete with its carrier-customers in providing IMTS to end users, and would have every incentive to provide all U.S. telephone carriers with high quality service at low cost-based rates. TRT also filed an application to operate a so-called "gateway" to the F.R.G. TRT argues that US Sprint's application, however, should be dismissed because it purports to seek authority to provide different facilities - direct circuits for "its" own traffic - than the facilities contemplated in the operating agreement - so-called "common gateway" facilities for the benefit of all U.S. carriers which do not have direct facilities to the F.R.G.[4] Alternatively, TRT seeks denial of the application because, it argues, US Sprint, as a competitor of its carrier-customers for so-called "common gateway" services, would lack the incentive to provide them with low cost, high quality services. TRT asks the Commission instead to grant TRT's application.[5] Moreover, TRT states that the DBP would accept the U.S. government's selection of a qualified carrier in place of US Sprint.

C. *US Sprint Opposition*

5. US Sprint replies that TRT has not met its burden under Section 63.52 of the Commission's Rules to demonstrate that the grant of US Sprint's application is prima facie inconsistent with the public interest. US Sprint states that TRT has not shown that US Sprint's application is deficient in any way. Specifically, US Sprint states that its application seeks authority for the facilities necessary to provide all of its forecasted IMTS traffic, both its own traffic and traffic of other carriers electing to resell US Sprint's service between the U.S. and the F.R.G., and that there is no difference between so-called "independent gateway facilities" and "common gateway facilities."[6] US Sprint observes that it has pledged to the DBP to provide service on a fair and equitable basis. US Sprint contends

that the facilities of all carriers subject to FCC jurisdiction, however, must be used in a fair and nondiscriminatory fashion and resale over these facilities cannot be prohibited. Such obligations, US Sprint asserts, are not generally considered to "condition" the facilities, but rather are part of a general body of rules and regulations which apply to all services within the ambit of the Commission's jurisdiction and generally are enforced through the tariff and complaint processes. Thus, US Sprint concludes, TRT appears to confuse the requirements applicable to the construction of facilities with the requirements applicable to provision of service over these facilities.[7]

6. US Sprint also asserts that TRT has provided no legitimate basis for the Commission to override the grant by the DBP of an operating agreement to US Sprint to provide the so-called "common gateway." US Sprint contends that the DBP selected US Sprint as the DBP was aware that US Sprint had substantial domestic traffic and would generate substantial traffic between the U.S. and the F.R.G. US Sprint concludes that the present position of the DBP is to provide operating agreements to the second and third largest U.S. voice carriers. That one operating agreement is a so-called "common gateway," US Sprint contends, was intended to provide further assurance of fair competitive conditions to smaller U.S. carriers.[8]

7. US Sprint further observes that there is no basis for TRT's assertions that the F.R.G. would be amenable to the substitution of TRT for US Sprint as the operator of the so-called "common gateway." US Sprint restates that size was an important criterion in the DBP's selection of US Sprint and that it makes no sense to limit carriers with large traffic volumes to the provision of service only through resale, while reserving direct connections only for smaller carriers. Additionally, US Sprint believes that the availability of resale provides carriers using the so-called "common gateway" with reasonable assurance that they will not be subject to price gouging or other unfair treatment. Finally, US Sprint alleges that TRT is subject to the same economic incentives as US Sprint.[9]

8. US Sprint argues that TRT's petition is without merit and irrelevant to Commission consideration of a request for authority under Section 214. US Sprint argues that TRT should not be able to use hollow and misplaced arguments to delay a service which is otherwise in the public interest, and urges the Commission to expeditiously and summarily dismiss TRT's petition.[10]

D. ***TRT Reply***

9. TRT replies that US Sprint's application raises novel and important questions for the Commission to decide in the context of US Sprint's Section 214 application. TRT argues that the Commission cannot reasonably assess whether the public convenience and necessity standard of Section 214 has been satisfied until it addresses how to structure competitive access to the so-called "common gateway" and what operating arrangement will exist between US Sprint and other carriers accessing the F.R.G. through US Sprint's facilities.

10. TRT concludes that the so-called "common gateway" constitutes a bottleneck access facility which gives US Sprint the incentive to discriminate in the provisioning and restoration of service, the opportunity to route its own traffic over cable facilities while routing traffic of its competitors over less desirable satellite facilities, the capability to bundle its rates for service in a manner designed to disadvantage its competitors which lack similar access to the F.R.G., and the ability to market the superior transmission quality and other benefits associated with its ownership.[11] TRT contends that, because Section 214(a) requires the Commission to find that the proposed acquisition or construction of facilities is required "by the present or future public convenience and necessity," and because, it asserts, an application cannot satisfy this standard when it presents realistic dangers of competitive restraint, the Commission must decide, in the context of US Sprint's Section 214 application, how competitive access to these bottleneck facilities should be structured.[12] TRT notes that the Commission previously has imposed conditions on Section 214 authorizations, and concludes that the Commission must condition any grant to US Sprint of Section 214 authority to operate the so-called "common gateway" facility on terms that will safeguard the public interest in competition.[13] TRT argues that US Sprint's statement that there are no additional obligations imposed on a so-called "common gateway" operator that are not already covered by Commission requirements underscores the need for imposing appropriate conditions. TRT suggests that such conditions might include a requirement that US Sprint partition its switch to offer TRT access that is technically equivalent to that which US Sprint would enjoy as owner and operator of the so-called "common gateway," safeguards to assure TRT access on a cost flow-through basis, or an express condition that prohibits discrimination by US Sprint in the routing of traffic over cable and satellite facilities.[14]

11. TRT further argues that the negotiations that led to US Sprint's selection as a so-called "common gateway" operator raise serious issues which could appear to implicate due process considerations. TRT states that, to the extent that the U.S. government urged the F.R.G. government to select MCI and US Sprint over other qualified U.S. companies, any such behavior would clearly be improper governmental conduct and contrary to explicit policies of the United States Department of State. TRT further states that the Commission never issued a notice of inquiry to solicit the comments of the U.S. carriers or their customers relating to what positions should be advanced by the United States government in these negotiations. Rather, TRT asserts, it understands that the U.S. government's position was formulated based principally upon the ex parte presentations of only MCI and US Sprint. TRT contends that the U.S. government urged or acquiesced in the selection of US Sprint as the common gateway operator, and must now correct that serious mistake. Moreover, TRT avers, U.S. participation in these matters confirms TRT's understanding that the DBP recognizes these matters to be of primary concern to the U.S., such that the DBP would accept Commission selection of a significantly more qualified common gateway operator from the United States' perspective. TRT advises that its affiliate, TRT Telecommunications Corporation, has provided mutually beneficial direct circuit services with the DBP for many years, that TRT operates more bandwidth to the F.R.G. (for other than television services) than any other U.S. carrier, that it owns a state-of-the-art digital switch with abundant capacity and that the quality of TRT's services equals or exceeds that of other U.S. IMTS providers. Accordingly, TRT concludes, there is no reason to anticipate that the DBP would reject TRT as the carrier ultimately selected to operate the so-called "common gateway."[15]

12. TRT further suggests that its own Section 214 application is mutually exclusive with that of US Sprint and that the Commission must consider, prior to granting either application, which applicant is better qualified to own and operate the so-called "common gateway."[16] TRT reiterates that its qualifications are at least equal to those of US Sprint and that US Sprint's application presents realistic dangers of competitive restraint. TRT states that as a carrier's carrier it would have greater incentives to provide high quality, low cost service, because if it were unable to provide its carrier customers with such competitive access, it would be driven out of business.[17]

13. TRT asks the Commission to dismiss or deny US Sprint's application as prima facie inconsistent with the public convenience and necessity. Should the Commission determine to grant US Sprint's application, however, TRT seeks imposition of conditions such as those it proposes.

E. ***ALC Comments***

14. ALC Communications Corporation (ALC) filed comments on the US Sprint and TRT applications. ALC, the parent of Allnet Communications Services, Inc., an interexchange carrier, states that it neither supports nor opposes either application, but urges the Commission to base any award of Section 214 authority to operate the so-called "common gateway" on a determination as to which applicant will best serve the public interest and to condition the authorization on assurances that the facilities will be made available to all carriers in the most efficient and equitable manner. ALC advises that, unlike TRT, it does not oppose US Sprint's application simply because US Sprint currently is an IMTS competitor.[18] Rather, ALC asserts, its concern is whether US Sprint will charge its competitors higher rates than the competitors' costs would be if they did not have to route their traffic through US Sprint.[19] ALC urges the Commission to regulate the so-called "common gateway" operator on a dominant carrier basis, because it views this arrangement as a bottleneck facility that enables the operator to exercise power and discriminate against competitors although the operator possesses only a small overall market share.

F. ***The Motions to Consolidate Proceedings***

15. On December 28, 1987, TRT filed a motion to consolidate its application with that of US Sprint for the purpose of a comparative hearing to determine which carrier should own the so-called "common gateway" facilities and how those facilities should be operated in the public interest.[20] On January 21, 1988, FTCC filed a Motion to Consolidate Proceedings asking for comparative consideration of its application and the applications of US Sprint and TRT. FTCC also asked to consolidate with these applications FTCC's petition for an order pursuant to Section 201 of the Communications Act to require the so-called "common gateway" operator to provide interconnection to other carriers on just and reasonable terms and conditions. FTCC, like TRT, concludes that the three applications are mutually exclusive because of the DBP's decision to provide access to all carriers other than AT&T and MCI through the so-called "common gateway." FTCC further believes that the unique circumstances of this case require the Commission to consider the terms and conditions under which the so-called "common gateway" would be operated, because, it avers, these terms and conditions will determine whether other carriers realistically will be able to compete with the operator of the so-called "common gateway."

G. ***US Sprint Opposition***

16. On January 13, 1988, US Sprint filed its opposition to TRT's motion.[21] US Sprint asserts that TRT has not demonstrated that there is any physical or economic exclusivity in the grant of multiple applications to provide IMTS service to the F.R.G., because a grant of US Sprint's application itself would not create a conflict with the grant of like authority to TRT. US Sprint notes that a carrier need not obtain an operating agreement with a foreign administration to be eligible for Section 214 authority. Moreover, US Sprint avers, TRT's claim of mutual exclusivity is based on its contention that it could secure an operating agreement with the F.R.G. only if US Sprint is denied authority. Eliminating US Sprint as a provider of direct service to the F.R.G., US Sprint states, would provide no assurance that the DBP would accept TRT instead of US Sprint, and retaining US Sprint, it continues, would not necessarily be a long-term bar to TRT's provision of direct service to the F.R.G., because further negotiations, a change of the F.R.G. policy, or an increase in TRT's traffic to the threshold for so-called "independent gateway" status might gain TRT an operating agreement with the F.R.G.

H. ***The TRT and FTCC Replies***

17. In its January 25, 1988 reply, TRT cites aviation case law for the proposition that government-imposed barriers to entry, as well as physical and economic laws, can create a situation of mutual exclusivity that requires a comparative hearing. TRT asserts that the Commission may not disregard entry barriers imposed by a foreign government, especially, it continues, where they were formulated after extensive discussions with U.S. government officials. Moreover, TRT avers, there is no evidence that the DBP might authorize additional operating agreements nor that it would not ratify an FCC selection of TRT as the so-called "common gateway" operator. Thus, it replies, US Sprint's argument that the two applications are not mutually exclusive is not consistent with reality. TRT concludes that the Commission should designate for hearing the parties' respective incentives and abilities to engage in discrimination and other anti-competitive conduct, whether the proposed rates of each carrier are reasonable, which carrier can operate the so-called "common gateway" at lowest cost and which carrier's operation of the so-called "common gateway" would best serve the public convenience and necessity.

18. In its February 17, 1988 reply, FTCC suggests that US Sprint has no objection to the consolidation of FTCC's Petition For Interconnection Order with the US Sprint, TRT and FTCC applications, because US Sprint's opposition to FTCC's motion added "nothing new of substance" beyond that contained in US Sprint's opposition to TRT's motion.[22] FTCC further asks to incorporate by reference TRT's January 25, 1988 reply, but adds that it should be read in the context of the three pending Section 214 applications although only two applications were pending when TRT's reply was written.

I. ***TRT's Petition for Leave to Withdraw Pleadings***

19. Although withdrawing its petition to deny US Sprint's application and its motion to consolidate the TRT and US Sprint applications for comparative hearing,[23] TRT states that it continues to believe that US Sprint's control of the so-called "common gateway," as designated by the DBP, raises serious long term concerns about the prospects of fair competition in the U.S.-F.R.G. IMTS market. TRT asserts that these concerns might be mitigated by Commission regulation of US Sprint as a dominant carrier with respect to this market, at least until the DBP modifies its current policy of restricting the number of IMTS carriers with which it will interconnect. TRT urges the Commission to monitor closely US Sprint's operations in its role as operator of the so-called "common gateway," and to continue, in consultation with other U.S. government agencies, to urge the DBP to liberalize its interconnection policies.

III. DISCUSSION

20. At present, only one U.S. common carrier, AT&T, provides direct switched voice service to the F.R.G. In this Order, we find that the present and future public convenience and necessity will be served by the grant of US Sprint's application to provide direct switched voice service to the F.R.G. and that US Sprint is qualified to provide such service.[24] In particular, we recognize that entry by US Sprint into the the F.R.G. switched voice market will give U.S. consumers an additional choice in selecting a service provider. Moreover, our decisions today, by companion orders, to grant Section 214 authority to MCI, TRT and FTCC to provide direct switched voice service to the F.R.G.,[25] demonstrate our unequivocal interest in, and support for, the efforts of additional carriers to obtain operating agreements for the F.R.G. and other foreign markets.[26]

21. In this Order, we also deny the motions to consolidate for comparative hearing the applications of US Sprint, TRT and FTCC.[27] We take this action for several reasons. First, we believe that market growth, as the parties forecast, should continue for U.S.-F.R.G. switched voice services and can sustain additional U.S. voice carriers.[28] We are hopeful that F.R.G. officials will assess the benefits of increased competition in the provision of direct switched voice service between our two countries and reach the decision to award TRT, FTCC, and other qualified carriers, the necessary operating agreements to provide such services. Second, we do not believe that there is any shortage of facilities between the U.S. and the F.R.G. Third, we do not believe that the aviation cases cited by TRT are on point. The cases cited by TRT involved decisions by the U.S. government to limit carrier access to particular foreign countries. This is not the case here. The Commission has not sought to limit carrier access to the F.R.G. Rather, as stated above, we have supported and will continue to support efforts to promote entry to encourage the DBP to open the F.R.G. market to allow free competitive access for all U.S. voice carriers that seek operating agreements with the DBP. Indeed, in response to the announcement by the F.R.G. government that the DBP would offer operating agreements to two additional U.S. voice carriers, the Chairman of the FCC wrote to the F.R.G. Minister of Posts and Telecommunications, welcoming the DBP announcement, but making clear our view that the DBP decision is an "important initial step" in ensuring that all U.S. consumers have an unfettered opportunity to communicate with consumers in the F.R.G.[29]

22. We recognize the concerns expressed, however, by TRT, FTCC and ALC concerning the imposition of a so-called "common gateway" arrangement by the DBP on US Sprint's provision of service on an interim basis. Indeed, we share their concerns that the stated position of the DBP could provide US Sprint with a competitive advantage vis-a-vis its carrier-customers. Therefore, we agree that we must retain strict regulatory oversight over competitive access to US Sprint's facilities to the F.R.G. Although US Sprint is correct that the facilities of all carriers subject to the Commission's jurisdiction must be used in a fair and nondiscriminatory fashion, we believe that TRT and ALC also are correct that the DBP characterization of the US Sprint arrangements as so-called "common gateway" requires special consideration in the context of US Sprint's Section 214 authorization. As a result, we will maintain Commission oversight of the terms and conditions of any tariff filing or contract setting forth US Sprint's rate to provide international haul service between the two countries. To this end, we will require US Sprint to implement a carrier contract or tariff rate for the provision of service between its switch in New York and the F.R.G., separate from its postalized rate for end-to-end customers. Moreover, we will evaluate the contract or tariff under standards similar to those we apply to the access filings of dominant carriers because of their bottleneck capabilities.[30] Furthermore, unless US Sprint proposes to route a proportionate share of inbound traffic to the domestic network of its carrier customers, we would expect the carrier rate to recognize the principle of "proportionate return traffic," by providing a commensurate reduction in the price the carrier customer must pay to route its F.R.G.-bound IMTS traffic through US Sprint's switch.

IV. ORDERING CLAUSES

23. Upon consideration of the application and in view of the foregoing, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct switched voice service between the United States and the Federal Republic of Germany by US Sprint.

24. Accordingly, IT IS ORDERED that the application of US Sprint, File No. I-T-C-88-015, IS GRANTED SUBJECT TO THE CONDITIONS discussed in paragraph 22 and note 30 of this Order, and US Sprint is authorized to:

a. lease from Comsat and operate sixty (60) voice-grade satellite circuits between US Sprint's international multi-purpose earth station at Franklin, New Jersey and an INTELSAT AOR satellite to connect with matching facilities furnished by US Sprint's correspondent in the F.R.G.;

b. operate sixty voice-grade circuits in its Franklin, New Jersey earth station;

c. operate its fiber optic network to connect its New York City technical operating center with the Franklin, New Jersey earth station; and

d. use these facilities to provide switched voice service between the U.S. and the F.R.G. and beyond.

25. IT IS FURTHER ORDERED that the Petition for Leave to Withdraw Pleadings filed by TRT is hereby GRANTED.

26. IT IS FURTHER ORDERED that the Motion to Consolidate Proceedings filed by FTCC is hereby DENIED.

27. This authorization is effective on its release date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

28. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock Chief, Common Carrier Bureau

FOOTNOTES

[1] On September 30, 1987 US Sprint notified the Commission of the decision of the Deutsche Bundespost (DBP) to grant US Sprint an operating agreement to provide what the DBP calls a "common gateway" to the F.R.G. US Sprint stated that its operating agreement with the DBP will allow US Sprint to access the F.R.G. directly in its provision of switched voice service and also to provide access to the F.R.G. to other U.S. carriers. US Sprint further advised that the DBP has stated that a U.S. carrier would be allowed to establish a so-called "independent" gateway to the F.R.G., should that carrier reach a market share of thirteen percent for U.S.-F.R.G. traffic. US Sprint also stated that the operating agreement provides that US Sprint would begin service to the F.R.G. in early 1988, with return traffic from the F.R.G. to begin six months thereafter. *See* September 30, 1987 letter from Bill Burgess, Vice President and Managing Director, US Sprint to the Chairman, FCC. US Sprint subsequently filed its operating agreement for the F.R.G. *See* December 29, 1987 letter from Randall S. Coleman, Senior Regulatory Attorney, US Sprint, to the Secretary, FCC.

[2] On December 4, 1987, TRT International, Inc. (TRT) filed a petition to deny US Sprint's application, but on February 25, 1988 filed a petition for leave to withdraw its petition and its motion to consolidate US Sprint's application with the TRT application filed on December 4, 1987. *See* File No. I-T-C-88-046. However, FTCC filed a motion to consolidate for hearing its application and those of US Sprint and TRT, and ALC Communications Corporation filed comments on the US Sprint and TRT applications. Thus, although the US Sprint application is unopposed, certain issues raised by TRT remain before us in the context of the additional filings. Additionally, various parties have asked to incorporate by reference certain filings in the TRT pleading cycles. For these reasons, our summary of the filings includes those pleadings filed by TRT.

[3] In its application filed October 27, 1987, US Sprint proposed to lease these connecting facilities from other common carriers at tariffed rates. US Sprint amended its application on February 3, 1988, to incorporate its revised proposal. In accordance with Sections 1.744(a) and 63.50 of the Commission's Rules, US Sprint served its amendment on the parties.

[4] TRT Petition to Deny at 2-3, 9-13. TRT states that the F.R.G. is the second largest IMTS market, making the ability to access the market of extreme importance to carriers attempting to establish IMTS competition. *IdId.* at 4.

[6] *Id.* at i-ii, 7-8.

[7] *Id.* at i-ii, 8-11.

[8] *Id.* at 11-12.

[9] If operation of three so-called "gateways" is considered adequate to generate substantial competition among the three so-called "gateway" operators, US Sprint avers, neither US Sprint nor TRT as operator of the third so-called "gateway" would be able to collect above-cost rates for a sustained period of time. If, on the other hand, US Sprint continues, so-called "gateway" operators are thought to possess bottleneck capabilities, as a matter of economics, TRT's incentive also would be to maximize profits by taking advantage of this bottleneck status. *Id.* at 13-15.

[10] *Id.* at 16.

[11] TRT Reply at 12-13.

[12] *Id.* at 13-16.

[13] *Id.* at 17-19.

[14] *Id.* at 19-21.

[15] *Id.* at 22-26.

[16] *Id.* at 1-2. TRT advises that it will file a motion to consolidate the two applications. *Id.* at 26 n. 32. TRT filed its Motion to Consolidate Proceedings on December 28, 1987. *See infra* at para. 15.

[17] TRT Reply at 26-30.

[18] ALC advises that the most reasonable rates for so-called "gateway" service available to Allnet are offered by carriers that are not primarily IMTS providers, *e. g.*, FTCC for service to France and TRT for service to the United Kingdom. ALC comments at 5 n. 7.

[19] ALC concludes that the difference between rates proposed by US Sprint and TRT suggests that US Sprint's rate may not be so fair and equitable. *Id.* at 6.

[20] TRT argues that the two applications are mutually exclusive because the "DBP has refused, at this time, to agree to interconnect with additional U.S. carriers . . . ." In addition to arguing for or against the mutual exclusivity of their applications, TRT's pleadings and US Sprint's opposition to the motion reiterate arguments set forth in the pleadings on US Sprint's application. These arguments will not be repeated here. *See supra* at paras. 3-13.

[21] US Sprint also filed, on February 5, 1988, a letter in response to FTCC's motion, incorporating by reference its opposition to TRT's motion. US Sprint states that FTCC's motion raises no new issues not already addressed in US Sprint's opposition to TRT's motion, which, it advises, it served on FTCC.

[22] FTCC also notes that in its January 21, 1988 Petition for Interconnection Order, FTCC has offered to provide interconnection services under a charging method which is virtually transparent with respect to operational and economic factors, and argues that FTCC's proposal is far more conducive to fostering competition than either of the other proposals.

[23] TRT advises that it has decided to withdraw these pleadings to expedite Commission approval of TRT's Section 214 application and to enable TRT's application to be acted on simultaneously with US Sprint's application. TRT states that simultaneous grant of these applications will further the public

interest by assuring early and simultaneous entry by both TRT and US Sprint, thereby helping to promote competition in the U.S.-F.R.G. market.

[24] We do not find US Sprint any less qualified to provide these services because it will offer end-to-end services in competition with its carrier customers. We note that TRT, although not operating a direct domestic network, as does US Sprint, has executed carrier agreements with domestic carriers which allow for direct termination of TRT's international services on the domestic carriers' networks and the routing of the domestic carriers' traffic to certain international points over the TRT network. *See, e. g.*, TRT letter of October 27, 1987 to Secretary, FCC, updating Section 43.51 agreement with RCI.

[25] *See* MCI Telecommunications Corp., I-T-C-88-005, DA 88-289, TRT International, Inc., I-T-C-88-046, DA 88-288, FTC Communications, Inc., I-T-C-88-058, DA 88-291.

[26] The Commission is not limited to granting Section 214 authority to serve a foreign point only to those carriers currently holding operating agreements with that country. A carrier may seek Section 214 certification to serve a foreign point without first consummating an operating agreement with the foreign correspondent. This is, in fact, the posture of TRT's and FTCC's applications. The prior grant of Section 214 authority can serve as an important negotiating tool for carriers seeking operating agreements. *See, e. g.*, International Relay, Inc., 77 F.C.C. 2d 819, 827 n.22 (1980).

[27] Moreover, we will review separately FTCC's petition for an interconnection order. The International Facilities Division placed FTCC's petition on Public Notice February 5, 1988. *See* File No. I-S-P-88-003, Report No. I-6174, Mimeo No. 1543.

[28] Data compiled from the Section 43.61 reports submitted by U.S. voice carriers and presented in the annual volumes of Statistics of Communications Common Carriers for the years 1975 through 1986 indicate that the total volume of switched voice traffic between the two countries has increased, on the average, by over 31 million minutes annually, from approximately 40 million total minutes in 1975 to over 380 million total minutes in 1986. An extrapolation of this average rate of growth would result in annual traffic of approximately 470 million total minutes by year-end 1989. These data lead us to conclude that the U.S.-F.R.G. market can support additional competition and that the entry of established competitive carriers such as US Sprint, TRT and FTCC into the market as viable competitors can be expected to increase customer choice, spur technological innovation and create a downward pressure on rates. We further conclude that grant of these applications is consistent with relevant case law. *See* F.C.C. v. RCA Communications, Inc., 346 U.S. 86, 96-97 (1953); Telocator Network of America v. F.C.C., 691 F.2d 525, 544-45 (D.C. Cir. 1982).

[29] *See, e. g.*, June 18, 1986 letter from the Chairman of the FCC to the Minister of Posts and Telecommunications, urging "open access of U.S. entities" to common carrier operating agreements with the F.R.G. We do not agree with TRT's assessment that the DBP offered MCI and Sprint operating agreements as a result of a "belief" that the U.S. government favored the selection of one carrier over another. In our discussions with DBP representatives, we made clear that we could not negotiate on behalf of individual U.S. carriers, but rather stated our interest in the DBP offering operating agreements to all U.S. voice carriers that seek to enter the U.S.- F.R.G. voice market. As discussed above, we will continue to support these carrier efforts.

[30] We contemplate using the following principles to evaluate the reasonableness of any tariff schedule US Sprint files: (1) fully distributed cost methodologies, and (2) access that is equal in price, terms, and quality in all respects provided by US Sprint for its own services. This includes the following principles of equal treatment listed by TRT in its pleadings: equal quality of service; nondiscriminatory cable/satellite ratio; order intervals for carrier customers that are no later than those for US Sprint's end-to-end customers; and marketing efforts that refrain from attributing any greater service quality to the facilities operator.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

FTC COMMUNICATIONS, INC. File No. I-T-C-88-058

Application for Authority to Acquire and Operate Facilities for Provision of International Message Telephone Service Between the United States and the Federal Republic of Germany and Beyond, and to Provide Gateway Services to Other Carriers

MEMORANDUM OPINION, ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: February 26, 1988 **Released: March 3, 1988**

By the Chief, Common Carrier Bureau:

1. On December 23, 1987, FTC Communications, Inc. (FTCC) filed an application, pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire and operate up to sixty (60) voice grade satellite circuits and associated connecting facilities for the provision of switched voice services between the United States and the Federal Republic of Germany (F.R.G.) and points beyond. The application is unopposed.[1] FTCC states that the requested facilities will be used to provide direct switched voice service between the U.S. and the F.R.G. and to provide so-called "common gateway" telephone service between the two countries for all interested U.S. switched voice carriers. The application also states that the charges for service will be reflected in the tariffs to be filed by FTCC or in contracts FTCC will negotiate with those carriers wishing to access the so-called "common gateway." Further, FTCC forecasts that switched voice traffic between the U.S. and the F.R.G. will continue to grow at an annual rate of between 11 and 13 percent.

2. Section 214 provides the Commission with the authority to require that carriers obtain a certificate that the "present or future public convenience and necessity require or will require the construction or operation . . . " of a new line or an extended line.[2] As discussed in companion orders,[3] we believe that the entry of additional U.S. voice carriers to the U.S.-F.R.G. market will increase customer choice and promote the public interest. In this Order, we find that FTCC is qualified to provide switched voice service between the two countries. As a result, we determine that the present and future public convenience and necessity will be served by grant of the FTCC application to provide direct switched voice service between the U.S. and the F.R.G.[4] In particular, we determine that there is no shortage of facilities between the two countries, and agree with FTCC that market growth should continue for U.S.-F.R.G. switched voice services.

3. Upon consideration of the application and in view of the foregoing, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct voice service to the Federal Republic of Germany by FTCC.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-88-058 IS GRANTED, and FTCC is authorized to:

a. lease and operate up to sixty (60) voice-grade satellite circuits between an East Coast international multi-purpose earth station and an Atlantic Ocean Region satellite to connect with matching facilities furnished by FTCC's correspondent in the F.R.G.;

b. lease and operate up to 60 voice-grade circuits in the East Coast earth station;

c. lease and operate up to 60 voice-grade circuits to connect its New York City switch with the East Coast earth station; and

d. use these facilities to provide switched voice service between the U.S. and the F.R.G. and beyond.

5. IT IS ALSO ORDERED that in order to provide the Commission with an opportunity to review the terms and conditions of any FTCC-DBP operating agreement for voice service between the U.S. and the F.R.G., FTCC must file any such operating agreement with the Commission within 30 days after the completion of the agreement.

6. This authorization is effective on its release date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

7. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock Chief, Common Carrier Bureau

FOOTNOTES

[1] FTCC filed a motion to consolidate its application with those of TRT and US Sprint. We denied the motion in US Sprint, I-T-C-88-015, DA 88-290.

[2] 47 U.S.C. Section 214.

[3] MCI Telecommunications Corporation, I-T-C-88-005, DA 88-289, US Sprint Communications Company, I-T-C-88-015, DA 88-290, TRT International, Inc., I-T-C-88-046, DA 88-288.

[4] In the United States, we refer to commercial arrangements for the joint provision of international service as operating agreements. FTCC styles its application, in part, as one seeking author-

ity for facilities to provide a so-called "common gateway." The rubric "gateway" is a term that has been used by the Deutsche Bundespost to describe its commercial arrangements with U.S. carriers; it has no significance under U.S. law. We do not believe that FTCC's use of this terminology, however, although not in accordance with standard practice, makes FTCC's application for Section 214 authority to acquire and operate international facilities procedurally defective. Rather, we will treat FTCC's application for authority to operate a so-called "gateway" as an elaboration on its Section 214 application to acquire and operate facilities for the provision of direct switched voice service between the U.S. and the F.R.G. and beyond that has no legal significance.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-140

In re Applications of

CATHERINE JUANITA HENRY	File No. BPH-831118AP
HARBOR COMMUNICATIONS, A CALIFORNIA LIMITED PARTNERSHIP	File No. BPH-840725IB
CALIFORNIA WOMEN IN RADIO, A CALIFORNIA LIMITED PARTNERSHIP	File No. BPH-840725IF
EARNEL DURDEN and UNE DURDEN d/b/a DURDEN BROADCASTING CO.	File No. BPH-840727ID
SIMPSON COMMUNICATIONS LTD., A LIMITED PARTNERSHIP	File No. BPH-840727IG
NATIONAL UNIVERSITY	File No. BPH-840727IH
EVELYN JACKSON, et al., d/b/a KALIEDESCOPE COMMUNICATIONS COMMITTE	File No. BPH-840727II
ECHEVERRIA BROADCASTING CORPORATION	File No. BPH-840727IJ
AMIGOS DE SAN DIEGO, A CALIFORNIA LIMITED PARTNERSHIP	File No. BPH-840727IM
REPRESENTATIVE MEDIA LIMITED PARTNERSHIP	File No. BPH-840727IP
TRIPLE BOGEY BROADCASTING, A CALIFORNIA LIMITED PARTNERSHIP	File No. BPH-840727IT
NEW SOUNDS OF SAN DIEGO, INC.	File No. BPH-840727IU
SAN DIEGO BROADCASTING, A CALIFORNIA LIMITED PARTNERSHIP	File No. BPH-840727IV
AMERICAN MEDIA GROUP, LIMITED PARTNERSHIP	File No. BPH-840727IW
SAN YSIDRO COMMUNICATIONS, A LIMITED PARTNERSHIP	File No. BPH-840727IY
HG COMMUNICATIONS, A LIMITED PARTNERSHIP	File No. BPH-840727IZ
COLOM COMMUNICATIONS CORPORATION	File No. BPH-840727JA
SAN DIEGO COMTRENDS, INC.	File No. BPH-840727JD
VISTA GRANDE BROADCASTING, A CALIFORNIA LIMITED PARTNERSHIP	File No. BPH-840727JI
DIANE OSEQUERA	File No. BPH-840727JJ
SOLEDAD BROADCASTING COMPANY	File No. BPH-840727JK
MARIA ELENA LASO BRADLEY	File No. BPH-840727JL

For Construction Permit
for a New FM Station
San Diego, California

Appearances

Lester W. Spillane, on behalf of Catherine Juanita Henry; *Lewis I. Cohen, Morton L. Berfield* and *Roy W. Boyce*, on behalf of Harbor Communications, A California Limited Partnership; *Terence L. Bruiners*, on behalf of California Women In Radio, A California Limited Partnership; *Donald E. Ward* and *Eric S. Kravetz*, on behalf of Earnel Durden and June Durden d/b/a Durden Broadcasting Co.; *Jeffrey D. Southmayd* and *Stephen C. Simpson*, on behalf of Simpson Communications Ltd., A Limited Partnership; *Julian P. Freret*, on behalf of National University; *Roy F. Perkins, Jr.* and *Saskia A. Arthur*, on behalf of Evelyn Jackson, et. al., d/b/a Kaliedescope Communications Committee; *Gene A. Bechtel* and *Shelley Sadowsky*, on behalf of Echeverria Broadcasting Corporation; *Peter A. Casciato*, on behalf of Amigos De San Diego, A California Limited Partnership; *Michael H. Rosenbloom* and *Rebecca L. Dorch*, on behalf of Representative Media Limited Partnership; *Eric L. Bernthal, Daniel F. Van Horn* and *Margaret R. Silverberg*, on behalf of Triple Bogey Broadcasting, A California Limited Partnership; *James E. Bubar*, on behalf of New Sounds of San Diego, Inc.; *B. Jay Baraff* and *Lee J. Peltzman*, on behalf of San Diego Broadcasting, A California Limited Partnership; *Raymond J. Kimball* and *James A. Stenger*, on behalf of America Media Group, Limited Partnership; *Frederick A. Polner* and *Gerald J. Koechel*, on behalf of San Ysidro Communications, A Limited Partnership; *Thomas A. Hart, Jr.* and *Leonard H. Freiman*, on behalf of HG Communications, A Limited Partnership; *Thomas L. Root*, on behalf of Colom Communications Corporation; *William J. Potts, Jr., John M. Pelkey* and *John P. Crigler*, on behalf of San Diego ComTrends, Inc.; *Richard E. Wiley, Lawrence W. Secrest, III*, and *M. Anne Swanson*, on behalf of Vista Grande Broadcasting, A California Limited Partnership; *William M. Barnard, James E. Edmundson*, and *Mark Van Bergh*, on behalf of Diane Osequera; *Bruce A. Eisen*, on behalf of Soledad Broadcasting Company; *Ramsey L. Woodworth, Lonna M. Thompson*, on behalf of Maria Elena Laso Bradley; and *Steven Yelverton*, on behalf of the Chief, Mass Media Bureau.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOSEPH CHACHKIN

Issued: February 23, 1988 **Released: March 16, 1988**

PRELIMINARY STATEMENT

1. By *Hearing Designation Order*, 50 Fed Reg. 24043, released June 7, 1985, the Chief, Audio Services Division, designated for a comparative hearing 46 applications, each of which sought a construction permit for a new station to replace the deleted facilities of Station KIFM-FM at San Diego, California. [1] Prior to designation, two applicants dismissed their respective applications. During the course of the proceeding, other applicants dismissed their applications,[2] so that at this time, 22 mutually exclusive parties continue to prosecute their respective proposals. These competing parties are: (1) Catherine Juanita Henry (Henry); (2) Harbor Communications, (Harbor); (3) California Women In Radio, (CWR); (4) Durden Broadcasting Co. (Durden); (5) Simpson Communications Ltd. (Simpson); (6) National University (National); (7) Kaliedescope Communications Committee (KCC); (8) Echeverria Broadcasting Corporation (EBC); (9) Amigos de San Diego (Amigos); (10) Representative Media Limited Partnership (RMLP); (11) Triple Bogey Broadcasting (TBB); (12) New Sounds of San Diego, Inc. (New Sounds); (13) San Diego Broadcasting (SDB); (14) America Media Group (AMG); (15) San Ysidro Communications (SYC); (16) HG Communications (HG); (17) Colom Communications Corporation (Colom); (18) San Diego ComTrends, Inc. (ComTrends); (19) Vista Grande Broadcasting (Vista Grande); (20) Diane Osequera (Osequera); (21) Soledad Broadcasting Company (Soledad); (22) Maria Elena Laso Bradley (Bradley).

2. With regard to the applicants who continue to prosecute their applications, the following issues have been specified:

1. To determine with respect to Kaliedescope Communications Committee and New Sounds of San Diego, Inc. whether, in light of the evidence adduced concerning financial qualifications set forth in paragraph 8 of the *Hearing Designation Order*, the applicants are financially qualified;

2. Whether there is a reasonable possibility that the tower height and location proposed by Vista Grande Broadcasting would constitute a hazard to air navigation;

3. To determine whether the application filed by Kaliedescope contains misrepresentations of fact or fails to reveal information called for in the application so as to result in a lack of candor concerning its ownership structure;

4. To determine whether there are real parties in interest in Kaliedescope, who have not been disclosed and, if so, the identity of each and the relationship of each to the financing, ownership, and operation of the proposed station.

5. To determine what effect the evidence adduced, pursuant to the foregoing issues, has on Kaliedescope's qualifications to be a Commission license.[3]

6. To determine whether Simpson Communications Ltd. misrepresented facts and lacked candor in its representation in its application that its principals had, as of the date of its application, a limited partnership agreement formalizing its limited partnership structure; and, if so, the impact of the foregoing on Simpson Communications Ltd.'s qualifications to be a Commission licensee; and

7. To determine whether principals of Simpson Communications Ltd. have misrepresented facts and lacked candor in sworn testimony in these proceedings and, if so, the impact of the foregoing on Simpson Communications Ltd.'s qualifications to be a Commission licensee;[4]

8. To determine, in light of the conviction of Uvaldo A. Martinez, Jr. under the penal code of the State of California, whether San Diego Broadcasting, a California Limited Partnership is qualified to be a licensee of the Commission;[5]

9. To determine which of the proposals would, on a comparative basis, best serve the public interest;

10. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.[6]

3. The *Hearing Designation Order* also noted that Station KIFM-FM had not provided the required 3.16 mV/m contour over the entire community of San Diego pursuant to Section 73.315 of the Rules. Since each of the designated applications have proposed similar and, in some instances, additional coverage of San Diego, the Chief, Mass Media Bureau concluded that the requirements of Section 73.315 of the Rules would be waived for all applicants to the extent that each applicant's proposed 3.16 mV/m contour provides city-grade coverage equal to or greater than that previously offered by KIFM-FM.

4. By *Order*, FCC 85M-4170, released October 28, 1985, the Presiding Judge resolved the air hazard issue specified against Vista Grande in the applicant's favor. By *Order*, FCC 86M-036, released January 7, 1986, the Presiding Judge granted New Sound's Motion for Summary Decision thereby resolving the financial qualifications issue in its favor.

5. An Admission session was held in Washington, D.C. on November 25- 27, 1985. Hearing sessions commenced on December 2, 1985 and ran through December 23, 1985. Further hearing sessions were held February 3 - February 11, 1985; March 18 - March 19, 1986; May 19 - May 21, 1986. The record was closed on May 21, 1986. *Order*, FCC 86M-1751, released May 23, 1986. Proposed findings of fact and conclusions of law were filed July 26, 1986; replies were filed September 8, 1986. The record was subsequently reopened when issue 8 was added against San Diego Broadcasting, a California Limited Partnership. A hearing session was held on April 6, 1987. The record was reclosed by *Order*, FCC 87M-769 released April 8, 1987. Supplementary proposed findings of fact and conclusions of law were filed May 6, 1987; replies were filed May 15, 1987.[7]

STANDARD COMPARATIVE ISSUE CATHERINE JUANITA HENRY (HENRY)

Background

6. Ms. Henry, a black woman, was born in Raleigh, West Virginia and educated in the public schools in that State. She attended West Virginia State College, but had to leave in late 1941 to work in New Jersey Defense plants. In the spring of 1944, she moved to Muskegon, Michigan to help her mother run a boarding house. She married in 1944 and from then until 1956 she was busy raising a family. In 1956, she moved to Hawthorne, California (Southern California), where, after her divorce, she opened and personally managed a dry-cleaning business until 1959. She then moved to the San Francisco Bay Area, after working as a Nursing Assistant at the Palo Alto Veteran Hospital, and the Emporium as a sales supervisor, she joined Station KJAZ, Alameda, California, in early 1968 (Henry Ex. 1). In September 1972, Ms. Henry married the owner of KJAZ and remained with the station until its sale in 1980.

7. Ms. Henry has not been regularly employed since 1980. She began receiving social security payments in July 1985. Also she and her husband receive income from investments made with the proceeds of the sale of station KJAZ. The income in the form of checks is deposited in Mr. and Mrs. Henry's joint bank account (Tr. 669-672, 698-699). Unlike her husband Ms. Henry intended to get back into broadcasting after the sale of KJAZ. Her husband suffers from diabetes and alcoholism and his poor health precludes his further involvement in a broadcast station (Tr. 696). Ms. Henry found out about the availability of station KIFM while reading "Broadcasting" looking for properties (Tr. 705).

8. The record reflects that Ms. Henry is the prime mover behind the prosecution of Henry's application and Mr. Henry has had only minimal involvement in the application. Ms. Henry retained as her counsel the counsel who formerly represented KJAZ because she thought he was a good attorney (Tr. 673). There is no evidence that her husband played a role in the decision or in her choice of engineer (Tr. 673, 703). Also, Ms. Henry conducted on her own an informal survey of San Diego's needs and interests (Tr. 703). Further, Ms. Henry has decided on a jazz format because of her long time interest in jazz. She decided to work at KJAZ because of the station's jazz format (Tr. 703). Mr. Henry did not accompany Ms. Henry to her deposition or the hearing in Washington (Tr. 703, 705).

Integration

9. Ms. Henry, as General Manager, will be integrated in the day-to- day management of the station on a full-time basis (meaning at least 40 hours per week). She will supervise and be responsible for all aspects of the operation (Henry Ex. 1).

10. Ms. Henry has continuously resided in San Diego since July 21, 1984 (Henry Ex. 1; Tr. 662-663).[8] Since July 1985, Ms. Henry has been a member of the San Diego chapter of the Urban League and NAACP (Henry Ex. 1; Tr. 689). In addition, since July 1985, she has served as chairperson of the San Diego Chapter of the Black American-Political Association of California, which meets once a month (Tr. 682-683). She also holds the membership chair and is on the Executive Committee of the Black Caucus (Tr. 684, 690). In addition, for the past year, she has aided the local educational station KSDS by providing advice as to fund raising and underwriting of programs. Ms. Henry has not personally solicited funds on behalf of the station (Henry Ex. 1; Tr. 675-676, 681).

11. Ms. Henry's first broadcast experience was in high school, as a featured performer in a weekly one hour show for a Beckley, West Virginia, radio station. Besides performing, she solicited sponsors for the program, which continued for more than six months (Henry Ex. 1). At KJAZ, she was sales manager from the end of 1968 to 1980 when the station was sold. She was in full charge of this department; her responsibilities including, sales planning and execution, development and overseeing of broadcast copy, accounts, collections and other business management functions. She also assisted the licensee by filling in for him in meetings, with clients and community people, when he was unable due to illness or other reasons, to handle them himself (Henry Ex. 1; Tr. 695). Ms. Henry has held an FCC operator's license for eight years, having maintained it because she always intended to get back into broadcasting (Tr. 702).

Diversification

12. The applicant has no other mass media interests of any kind (Henry Ex. 1; Tr. 685).

Auxiliary Power

13. Henry proposes to construct auxiliary facilities to assure that the station can continue to operate in the event of a power failure (Henry Ex. 1).

HARBOR COMMUNICATIONS (HARBOR)

Background

14. Harbor is a limited partnership organized under the laws of the State of California. Its general partner is Sheryl Carey, who holds a 10% interest in the applicant; its limited partners are Cecil C. Butler, Charles Moore, Maurice Glover and Elzie Higginbottom, who each hold a 22.5% interest therein (Harbor Ex. 1, 4).

15. The original Harbor partnership agreement dated July 23, 1984, provided that Ms. Carey would receive her 10% interest in return for contributing 10% of the costs of prosecuting the Harbor application (Harbor Ex. 4; Tr. 1003, 1183-84).[9] The limited partners were to advance the sums necessary to meet this commitment and, by a separate agreement of the same date, she was to repay them the first2,000 of such advances by July 30, 1985 (Harbor Ex. 4, 5). No repayments were made, however, and the partnership agreement instead was revised, as of July 6, 1985, to provide that she would be given her interest in return for services rendered to the applicant (Harbor Ex. 3; Tr. 1047-48, 1116).[10] According to Ms. Carey, this revision was occasioned by her recognition that she had contributed time prior to grant of the Harbor application which was greater than she originally had anticipated (Tr. 1119, 1183-84). Upon further examination by the Presiding Judge, however, she admitted that in the year between the execution of the original agreement and the revision thereof, her services consisted of reviewing the Harbor application and supplying the names of local groups for its Form 396-A Model EEO Program immediately prior to the filing of the application (Tr. 1122-26).[11] Ms. Carey also maintained that the original basis for her participation was her financial investment, but then conceded that she was unable to contribute even an initial1,500 to the applicant (Tr. 1147).

16. Although ostensibly a "limited partner", Cecil Butler has played the major role in the formation and prosecution of Harbor's application. Butler, a former college professor of Ms. Carey, advised her of the availability of an FM channel in San Diego and selected her as a general partner. Ms. Carey attended Fisk University and took several courses with Butler in 1971-1972. Ms. Carey has never been involved in any business dealings with Butler, other than the present venture. She testified that she has had telephone conversations with him in the intervening period on personal matters (Tr. 982, 988-989). Butler arranged her meeting with Harbor's present counsel, who represented the limited partners in other broadcast ventures (Tr. 1145-1146). Butler also obtained the applicant's other limited partners. Ms. Carey has never met or talked to Harbor's other limited partners (Tr. 1112).

17. Butler procured the bank financing letter for construction and operation of the station. The letter secured from a Chicago bank, where Butler resides, is addressed to Butler (Tr. 1017, 1100). Ms. Carey never saw the bank letter until her testimony at hearing, even though the letter requires the assurance of her personal guarantee (as well as the limited partners) for funding (Tr. 1045).[12]

18. Butler has maintained Harbor's books, and until June 1985 was the only person authorized to write checks for the partnership (CWR Ex. 10; Tr. 1051-52). During this period, Ms. Carey did not know how much money had been contributed to the partnership or what checks had been issued (Tr. 1142- 43, 1152). Harbor's books of account as well as its accountant is located in Chicago. This decision to hire a Chicago accountant, even though the partnership's offices are in Los Angeles, California, where Ms. Carey resides, was made on the strong recommendation of Harbor's counsel. Ms. Carey does not know the reason why her counsel wanted a Chicago accountant (Tr. 1143, 1161). Even after June 1985, when Ms. Carey opened a bank account for the partnership, she consulted Mr. Butler before the partnership incurred major expenses and he was the one to make the capital calls necessary to meet such expenses:[13] Ms. Carey's sole function was to then execute the appropriate checks (Tr. 1144, 1157). Assuming a grant of Harbor's application, Ms. Carey will continue to consult Butler on substantial expenditures of the partnership including equipment purchases (Tr. 1143-1144, 1170) because "he's got the money" (Tr. 1170).

Integration

19. Ms. Carey is proposed as the General Manager of Harbor's station on a full-time basis (a minimum of forty hours per week) (Harbor Ex. 1, p. 2). Ms. Carey, a black American, resides in Los Angeles and the record of this proceeding reveals she has no ties to San Diego. *Ibid.* Ms. Carey represents that she will move to San Diego in the event of a grant of Harbor's application. Ms. Carey has not engaged in any civic activities in San Diego. Ms. Carey presently sells real estate in Los Angeles, an occupation she has held since 1977. Ms. Carey was a teacher from 1974-1977.

20. Ms. Carey has no experience in broadcasting, and the partnership will hire an experienced station manager to run the day-to-day operations of the station, hire and fire employees, determine the station's format, and supervise its salespersons and other personnel (Tr. 1052-53, 1108-09). She states that the station manager will perform these duties, however, subject to her "overall review" as the station's general manager (Harbor Ex. 1, Tr. 1108- 09).

Diversification

21. Neither Harbor nor its principals have any interest in other media of mass communications (Harbor Ex. 1, p. 2).

Auxiliary Power

22. Harbor proposes to provide auxiliary power equipment (Harbor Ex. 1, p. 2).

CALIFORNIA WOMEN IN RADIO (CWR)

Background

23. California Women In Radio (CWR) is a limited partnership formed under the laws of the State of California (CWR Ex. 1). The Certificate of Limited Partnership was filed with the State of California on August 27, 1984 (CWR Ex. 7A). The general partner of CWR, California Women In Radio, Inc. (CWRI), is a corporation formed under the laws of the State of California (CWR Ex. 1).

The Articles of Incorporation of CWRI were filed with the State of California on July 17, 1984 by Mr. George Malti, CWRI's Incorporator and initial agent (CWR Ex. 7A). CWIR's By-Laws were adopted on July 22, 1984 by its Incorporator, George Malti (CWR Ex. 7B).

24. On July 25, 1984, when the CWR FCC Form 301 application was filed, Ms. Carol Benton was the sole limited partner of CWR (RMLP Ex. 14). Ms. Benton had a 70% limited partnership interest (RMLP Ex. 13). CWRI had a 30% general partnership interest. *Id.* The original shareholders, officers and Directors of CWRI were as follows (RMLP Ex. 14):

Mercedes Tondre	President, Treasurer, Director	33 1/3% shareholder
Debra Deane	Vice-President, Director	33 1/3% shareholder
Ardyth Shaw	Secretary, Director	33 1/3 shareholder

25. On the B-cut-off date, the composition of the general partner and the limited partners changed, along with the equity interests of the general partner and the limited partners. Specifically, Ms. Tondre became a limited partner, with a 10% equity interest; Ms. Benton remained a limited partner with a 70% equity interest; and CWRI's equity interest decreased to 20% (CWR EX. 1; Tr. 917, Tr. 1256). Ms. Shaw and Ms. Deane both became 50% shareholders of CWRI (CWR Ex. 1). Ms. Shaw replaced Ms. Tondre as President and Treasurer of CWRI (CWR Ex. 1). Ms. Deane remained the Vice President and replaced Ms. Shaw as Secretary (CWR Ex. 1).

26. CWRI is authorized to issue 100,000 shares of stock (CWR Ex. 8A). The corporation has issued 10,000 shares – 5,000 shares each to Deane and Shaw (CWR Ex. 13, 14). The 10,000 shares were issued pursuant to Stock Purchase Agreements and Promissory Notes entered into by Deane and Shaw on July 22, 1984 (CWR Ex. 8D). Pursuant to these Agreements, the purchase price for the 5,000 shares of stock "shall be evidenced by a non-interest bearing Promissory Note payable at the rate of100.00 per month for fifty (50) consecutive months. The first such payment shall be made on or before August 31, 1984, and the balance of the payments shall be made on the last day of the next successive forty-nine (49) months." (CWR Ex. 8D). As collateral for payment of the indebtedness, a continuing security interest in and lien upon the shares were pledged, hypotheticated, mortgaged, assigned, transferred and granted to the corporation (CWR Ex. 8D). The Promissory Notes contain a provision wherein any default in payment of any installment which continues for thirty days after written notice shall, upon election of the legal holder of the Note, render the entire unpaid balance due and payable at once (CWR Ex. 8D).

27. The share certificates, issued on July 22, 1984 and signed by Tondre as President and Shaw as Secretary/Treasurer, stated that the shares were "fully paid and non-assessable," and contained no reference to the Promissory Note and Stock Purchase Agreement (CWR Ex. 13, 14). The Board of Directors of CWRI, on July 22, 1984 resolved "that the shares so issued shall be fully paid and non-assessable . . . ." (RMLP Ex. 10). Ms. Shaw testified, however, that she does not own the stock until it has been paid for (Tr. 866).

28. Subsequent to the testimony of the CWR principals, the stock certificates issued to Shaw and Deane were "corrected" by the deletion of the term "fully" in the phrase "fully paid" and the insertion therefor of the term "partially," and the deletion of the prefix "non" in the term "non-assessable." The "corrected" certificates also contained a new provision referring to the July 22, 1984 Promissory Note and Stock Purchase Agreement. [14] The corrections of the certificates were not endorsed or initialed by either the shareholders, the President or the Secretary/Treasurer of CWRI.[15] No documents reflecting approval of this change by the Board of Directors of CWRI apparently exist, as none were ever produced.

29. There is no provision in any of the written agreements between the principals of CWR precluding Ms. Benton from becoming an additional general partner of CWR or a shareholder of some or all of the remaining 90,000 shares of authorized CWRI stock (CWR Ex. 7B; Tr. 884-85; Tr. 1252-55). In fact, the limited Partnership Agreement refers to multiple general partners, and provides for the situation in which limited partners are also general partners (CWR Ex. 7; Tr. 847-48).

30. Ms. Benton orally promised to fund personally the estimated 580,000 in prosecution, construction, and initial operation costs of CWR's proposed station (Tr. 896; Tr. 1247; Tr. 2196; RMLP Ex. 10). The Limited Partnership Agreement only requires Ms. Benton to make a 35,000 capital contribution (CWR Ex. 7B). No further monetary obligation is required of Ms. Benton pursuant to any of the written agreements between the principals (Tr. 2212-13; CWR Ex. 7B). Pursuant to the Limited Partnership Agreement, the total financial obligations of Ms. Tondre, Ms. Shaw and Ms. Deane, are5000 (CWR Ex. 7C). Ms. Benton verbally committed to provide the requisite prosecution, construction, and initial operation funds to the partnership in the form of loans "as needed," but as of the hearing testimony of CWR there were no written agreements in existence concerning such loans (Tr. 862-64; Tr. 2187-88, 2213). Specific terms for such loans had not been discussed or agreed to, but these hypothetical loans would apparently be a debt against the partnership, and would be interest-bearing (Tr. 863-65; Tr. 870-72; Tr. 1250- 51; CWR Ex. 7B). The Limited Partnership Agreement specifically states that a limited partner "shall not be required to lend any funds to the partnership (other than as agreed in writing)." (CWR Ex. 7B). Although no loan agreements have been produced, CWR's counsel stated on February 27, 1986 that Ms. Benton has made loans to CWR.[16] Ms. Tondre, as a limited partner, has not agreed to make or ever considered making loans to the partnership (Tr. 2213-14).

31. Ms. Benton initially determined to apply for the San Diego radio station and then sought out Ms. Shaw, Ms. Deane, and Ms. Tondre to participate with her in this broadcast venture (Tr. 742-46; Tr. 1212-14; Tr. 2109-13). Prior to July 14, 1984, neither Ms. Deane nor Ms. Shaw had any previous knowledge of or acquaintance with Ms. Benton, Ms. Tondre, or each other (Tr. 747, 760, 889; Tr. 1213, 1215). On July 14, 1984, Benton met with Tondre, Deane, and Shaw to discuss the formation of a limited partnership to apply for Channel 251B in San Diego, California, and to explain their respective obligations in the venture (Tr. 745-51; Tr. 1216-17, 1219-20). Ms. Benton had already hired an engineer to perform the necessary engineering for the application (Tr. 1220; RMLP Ex. 8). Prior to the time the other principals agreed to participate

in the venture, the engineer, Mr. Biby, had already traveled to San Diego on behalf of CWR and had completed the engineering section of FCC Form 301 (Tr. 772-73; Tr. 973; Tr. 1221; Tr. 2119; RMLP Ex. 8, 9). Also prior to the time the other principals agreed to participate in the venture, Ms. Benton's counsel had prepared the application and all the limited partnership and corporate documents (Tr. 753, 756-57, 792, 965-66; Tr. 1223, 1227; Tr. 2135, 2145-46). Subsequent to the July 14, 1984 initial meeting and prior to the July 22, 1984 meeting, copies of the limited partnership agreement were for the first time sent to Tondre, Deane and Shaw (Tr. 1223).

32. On July 22, 1984, the principals of CWR met for the second time, in the offices of Ms. Benton's San Francisco counsel (Tr. 754, 839; Tr. 1221). At that meeting, Tondre, Deane and Shaw agreed to participate in the venture (Tr. 2125); the decision was made that Ms. Benton's counsel would be counsel for CWR (Tr. 840, 956-66; Tr. 1235); and Tondre, Deane, and Shaw were informed that the engineering had already been completed (Tr. 761-62; Tr. 1232). The limited partnership documents were briefly discussed and were then signed, without change (Tr. 843; Tr. 1236-37; Tr. 2150-51); the corporate documents were also signed, without change (Tr. 754); Deane, Shaw, and Tondre executed the Promissory Notes for the purchase of their respective 5000 shares of stock in the corporation (Tr. 754, 855; Tr. 1238-39); the already-prepared FCC Form 301 application was signed (Tr. 792, 975; Tr. 1223-24, 1230); and the officers and directors of CWRI were elected (Tr. 875; Tr. 965-66; RMLP Ex. 10).

33. Ms. Tondre, who had been socially acquainted with Ms. Benton since 1982, was elected President, Treasurer, and a Director of CWRI (Tr. 2124). Tondre signed the CWR application and was designated in FCC Form 396-A as the individual responsible for implementation of the EEO program (RMLP Ex. 14). According to the Stock Purchase Agreements and Promissory Notes entered into on July 22, 1984, Tondre, Deane, and Shaw became obligated to pay to the corporation100 per month for 50 months (4 years and 2 months), starting in August of 1984, for the purchase of their respective shares of stock in the corporation (CWR EX. 8D). As collateral for the notes, the stock was pledged back to the corporation (CWR Ex. 8D). Stock certificates representing 5000 shares of stock, dated July 22, 1984, were issued to Tondre, Deane, and Shaw (CWR Ex. 12, 13, 14). However, neither Ms. Dean nor Ms. Shaw made the first installation payment in August of 1984. In fact, sixteen months later, at the time of the comparative hearing testimony of CWR, Ms. Deane had only made one100 payment -- in December 1984 -- and Ms. Shaw had made only two100 payments -- one each in October and November of 1985 (Tr. 1240; Tr. 857, 957). Both Shaw and Deane testified that they were aware that they were unconditionally obligated to make timely repayments pursuant to the Promissory Notes they each had signed on July 22, 1984. Further, both were aware they were in default (Tr. 1278). Neither woman had received any default notice from the corporation, however, because they themselves were the only officers of the corporation authorized to take any action upon a shareholder' default (CWR Ex. 8E; Tr. 1280-81).[17] The Promissory Notes had been entered into because both Deane and Shaw were unable to come up with the 5000 necessary to purchase their interests in the corporation (Tr. 956, 1219, 2194). Ms. Benton was also aware in July of 1984 of their financial difficulties (Tr. 1219, Tr. 2188). Moreover, Ms. Deane testified that she did *not* intend to make her monthly payments until she became employed on a full-time basis (Tr. 2178). There is no indication in the record that Ms. Deane has found such full-time employment, or that she has yet begun making payments on her stock. Quite the contrary, on June 20, 1986, the CWR application was amended to reflect that Ms. Deane was no longer even employed part-time at Station KCST- TV, San Diego.

34. Ms. Tondre made a1000 payment on her5000 promissory note on August 31, 1984 (Tr. 2180). The testimony indicates that Ms. Tondre has stayed current in her payments (Tr. 2180-81). Initially, Ms. Tondre's payments were deposited in the corporate checking account. Those funds have never been transferred to the limited partnership account (Tr. 915-16).

35. On or before the B-cut-off date, Ms. Tondre became a 10% limited partner, and relinquished her 33 1/3% interest in CWRI (CWR Ex. 7C). Her 5000 promissory note was assigned to the limited partnership as her capital contribution, and the stock she was issued was redeemed by the corporation (CWR Ex. 7C; Tr. 915-16). She has continued to make payments on the Promissory Note, paying into the limited partnership account (Tr. 915-16). Tondre became a limited partner to improve the comparative status of CWR, since she was not a resident of the San Diego area (Tr. 939). No serious consideration was ever given to the possibility that Shaw or Deane could exercise their shareholder rights to purchase Tondre's stock because neither had the requisite funds, nor was any consideration given to exercising the corporation's right to purchase Tondre's stock (Tr. 947; Tr. 1257-58).

36. Up until the B cut-off-date, Tondre was the CWRI shareholder primarily involved in prosecution of the application (this aside from limited partner Benton's participation) (Tr. 973). Ms. Benton initially contacted Tondre and asked her to assist in locating other minority women to participate in this venture (Tr. 2109-14). Tondre, along with Benton, approved the recruitment of Shaw and Deane (Tr. 2114-18). Tondre, as President of CWRI, signed the CWR application (RMLP Ex. 14); signed the stock certificates (CWR Exs. 12-14; Tr. 2106); is designated in the application as the individual responsible for implementation of the station's EEO program (RMLP Ex. 14); signed the August, 1984 State of California Statement By Domestic Stock Corporation (CWR Ex. 8G); signed the State of California Certificate of Limited Partnership Form LP-1 (CWR Ex. 7A); signed the CWR Agreement of Limited Partnership (CWR Ex. 7B); signed the Stock Purchase Agreements entered into by herself, Deane, and Shaw (CWR Exs. 8D,E,F); signed the Pledge Agreements entered into by herself, Deane, and Shaw (CWR Exs. 8D,E,F); and signed the Shareholder's Agreement (CWR Ex. 8C).

37. Up until the B-cut-date, when Tondre relinquished her status as a voting shareholder of the general partner of CWR to become a limited partner, she was, for all intents and purposes, acting according to her official capacity as chief operating officer of CWR. The other two shareholders of CWR did not participate nearly to this extent in these early stages of the prosecution of the CWR. Thereafter, Tondre directed Shaw to open up a bank account (Tr. 973). Benton received deposit slips from Shaw and was contacted by Shaw for additional money (Tr. 958, 975). In early 1985, several months after the B cut-off-date, Benton directed Shaw to settle Mr. Biby's bill

(Tr. 974; Tr. 774). Up through at least October 4, 1984, Mr. Biby was still dealing exclusively with Benton rather than with either Shaw or Deane (RMLP Ex. 8, RMLP Ex. 9, Tr. 9847,

Integration

38. CWR proposes the full-time integration (a minimum of forty hours per week (of Ms. Ardyth Shaw and Ms. Debra Deane) (CWR Ex. 2).

39. Ms. Shaw is proposed to be the Public Affairs Director of the station (CWR Ex. 2). As Public Affairs Director, Ms. Shaw will prepare and produce public affairs programming (Tr. 811). Ms. Shaw will have no staff (Tr. 808). She will host a weekly public affairs show similar to the program she produces at station KSDO, San Diego (Tr. 812). The weekly show she produces for KSDO requires about 15 hours per week of her time to produce (Tr. 812).

40. Ms. Deane is proposed to be the News Director of the station (CWR Ex. 2). As News Director, Ms. Deane will announce the news, will "go out on a beat to cover a story," will write material, and will assist in the editing and production of the news (Tr. 1260-63). She will set the news policy and establish the focus of news coverage (CWR Ex. 2; Tr. 799). No budget has been prepared for the news department, but Ms. Deane anticipates other news personnel will be hired (Tr. 1264-65).

41. CWR will hire a General Manager who will have responsibility over every area of the day-to-day operation of the station. The General Manager will hire and supervise key personnel such a a Program Manager, Sales Manager, Operations Manager, Station Manager, and accounting and financial personnel (Tr. 778, 802-04). The General Manager will also decide the station's commercial policy (Tr. 800). Ms. Shaw was unsure who would make the decisions regarding functional aspects of the commercial policy (Tr. 800- 01). However, she stated the employees would be open to suggestions, input, and direction from Deane and Shaw (Tr. 778, 800-04, 1268-69).

42. Ms. Shaw, a black woman and a San Diego lifetime area resident, has hosted and produced a weekly Sunday evening public affairs/interview/call- in show, "On the Line," on Radio Station KSDO, San Diego since 1982 (RMLP Ex. 14, CWR Ex. 2 and 3). She currently spends approximately 15 hours per week at Station KSDO (Tr. 812). She has promised to resign this position should CWR's application be granted (CWR Ex. 2). Between 1978 and 1981, Ms. Shaw was a co- host and producer of an interview program on Station KPBS(FM), San Diego (CWR Ex. 3). During 1976, she worked as a news writer at Radio Station KFMB, San Diego (CWR Ex. 3). Since filing the CWR application, Ms. Shaw has become a member of the National Association of Black Journalists and the San Diego Press Club (CWR Ex. 3). She is also, as a condition of her employment, a member of AFTRA (CWR Ex. 3; Tr. 782-785).[18] Between 1981 and 1983, Ms. Shaw served as Chairperson of The Forum, -- a now-disbanded association of black professionals -- and as publicity chair of the local United Negro College Fund (CWR Ex. 3; Tr. 790-92). Fifteen years ago, Ms. Shaw served on the local YMCA Board of Directors (CWR Ex. 3; Tr. 790). Between 1982 and 1983, Ms. Shaw served as Mistress of Ceremonies for the Annual Black Achievement Awards (CWR Ex. 3; Tr. 788). She has also acted as one of approximately 50 auctioneers at Station KPBS's annual auction (CWR Ex. 3; Tr. 789). She once was a panalist at a Minority Youth Media Conference and has been a regular speaker at career and women's opportunity seminars at local high schools, colleges and universities (CWR Ex. 3; Tr. 786-87).

43. Ms. Deane, a black woman, has lived in the San Diego area since June of 1981 (CWR Ex. 2 and 4). Ms. Deane is not currently employed in any medium of communications. From December of 1984 until the spring of 1986, Ms. Deane worked part-time, approximately 16 hours per week, as a general assignment reporter for Station KCST-TV in San Diego (CWR Ex. 4; Tr. 1260-61). Between October 1983 and November 1984, she worked as an afternoon anchor and news editor at Station KOGO, San Diego (CWR Ex. 4; RMLP Ex. 14; Tr. 1262). Ms. Deane worked at Station KCBQ, San Diego, as a news anchor/public affairs director between June of 1981 and the fall of 1983 (CWR Ex. 4). Prior to moving to San Diego, Ms. Deane worked between 1978 and 1981 in various capacities -- as a host, announcer, public affairs producer, news anchor, reporter and editor -- at various radio and television stations in Denver, Colorado. Between 1972 and 1973, she was an announcer and public relations director at Station KLOK, Memphis, Tennessee. Between 1973 and 1976, she served variously as a reporter, news anchor and public affairs producer at Station WNGE-TV in Nashville, Tennessee. Between 1970 and 1971, she worked as a radio announcer in Jackson, Mississippi at WXKI radio, and between 1968 and 1970, as an announcer at KBPI radio in Denver, Colorado (CWR Ex. 4).

44. Ms. Deane was a member, for one year, of the NAACP Speakers Bureau, but has not participated as a speaker in the past year (CWR Ex. 4A; Tr. 1270). In the spring of 1984, Ms. Deane became a member of the San Diego Association of Black Journalists, and has served as a speaker for this organization on one occasion (CWR Ex. 4A; Tr. 1271). She has been an associate member of the Black Federation of San Diego since 1973 (CWR Ex. 4; Tr. 1271-72). She is also a member of the following professional organizations: AWRT and AFTRA (CWR Ex. 4A; Tr. 1273). She was a Troop Leader of her daughter's Girl Scout Troop in 1983-84 (CWR Ex. 4A; Tr. 1273); was a Sunday School Teacher between 1982 and 1985 (CWR Ex. 4A); and served on the PTA of her children's elementary school for four years, during which time she organized a one-time child abuse program featuring local police and child abuse officers, for presentation to other parents (CWR Ex. 4A; Tr. 1272- 74).

Diversification

45. Ms. Benton is Vice President and Operations Manager of KUIC(FM), Vacaville, California (RMLP Ex. 14; CWR Ex. 5). Quick Broadcasting, Inc. is the licensee of Station KUIC. *Id.* Ms. Benton is the Vice President, Secretary, and, a Director of Quick Broadcasting, Inc. (RMLP Ex. 13 at 5-6). [19] Ms. Benton's father, Harry J. Benton, is the controlling principal of Quick Broadcasting, Inc. (RMLP Ex. 14, CWR Ex. 5). The 1961 Benton Family Trust, of which Ms. Benton is one of three income beneficiaries, holds a 40% voting stock ownership interest in Quick Broadcasting, Inc. (CWR Ex. 5; RMLP Ex. 11; RMLP Ex. 13 at 10; RMLP Ex. 14). The grantor of the 1961 Benton Family Trust is Harry J. Benton, Ms. Carol Benton's father (RMLP Ex. 11). Ms. Carol Benton's mother, Ms. Margot Benton was a trustee of this trust from March 23, 1983 until some time after the comparative

testimony of CWR's principals (CWR Ex. 16).[20] The Trust does not preclude communications between the trustees and the beneficiaries (RMLP Ex. 11).

46. Ms. Benton has promised to "divest herself of any incidents of ownership and/or control of KUIC," and resign her position as Vice President/Operations Manager of KUIC, should the CWR application be granted (RMLP Ex. 14; Tr. 912). The *Hearing Designation Order* in the instant proceeding states that as a precondition of a grant of the CWR application, Ms. Benton must "divest herself of all interest in, and sever[] any connection with, Station KUIC, Vacaville, California." (*HDO* at Paragraph 81; Tr. 914). To fulfill this pledge, the only steps Ms. Benton intends to take are to resign her position as an officer and employee of Station KUIC (Tr. 2638-39). She intends to take *no* additional steps with respect to divesting herself of any incidents of ownership of Station KUIC via her status as income beneficiary of the 1961 Benton Family Trust (Tr. 2638; RMLP Ex. 11). Ms. Benton has not reported her status as Vice President, Secretary, and Director of Quick Broadcasting, Inc., and has made no separate divestiture pledge with respect to these official positions.

47. In addition, Quick Broadcasting, Inc. executed an agreement on November 4, 1985 to acquire Stations KLLB/KRQK in Lompoc, California.[21] Quick Broadcasting, Inc. then assigned its rights, title, and interest in KLLB/KRQK to Crystal Broadcasting, Inc. Assignment of the licenses of KLLB/KRQK to Crystal Broadcasting, Inc. was approved by the Commission on January 8, 1986. *Public Notice*, Report No. 19703, released January 14, 1986. The assignment of license was consummated on March 3, 1986.[22] The 1961 Benton Family Trust holds a 56.7% voting interest in Crystal Broadcasting, Inc. Yet another trust, created under Articles IV and V of the Will of Paul Benton, of which Ms. Carol Benton is also a beneficiary, holds 60% of the nonvoting convertible stock of Crystal Broadcasting Inc.[23] One of the trustees of this trust is Harry J. Benton, father of Ms. Carol Benton, and communications between the trustees and beneficiaries are not precluded. *Id.* Ms. Benton has made no divestiture commitment with respect to KLLB/KRQK.

48. Ms. Mercedes Tondre is an account supervisor at Media Headquarters, Inc., a Los Angeles media buying service (CWR Ex. 5; Tr. 212- 28).

49. Ms. Shaw is employed by Station KSDO, San Diego, as a part-time talk show host. She has promised to resign this position if the CWR application is granted.

Auxiliary Power

50. CWR proposes to install auxiliary power to ensure continued service in the event of disruption of normal power sources (CWR Ex. 6).

DURDEN BROADCASTING COMPANY (DBC)

Background

51. DBC is a general partnership comprised of Earnel Durden and June Durden, who as husband and wife will each own and control 50% of the partnership (DBC Ex. 1, p. 1; Ex. 2, p. 1; Tr. 1374).[24] They have resided in La Mesa, California, about 2 miles from the San Diego city limits and within the service contour of their proposed station, for the past twelve years, *i. e.*, since 1974 (DBC Ex. 1, p. 2; Ex. 2, p. 2; Tr. 1416). Both are Black (DBC Ex. 1, p. 4; Ex. 2, p. 4).

Integration

52. Mr. and Mrs. Durden each will work at their station on a full- time basis (*i. e.*, 40 or more hours per week) in the capacity of General Manager and Station Manager, respectively (DBC Ex. 1, p. 3; DBC Ex. 2, p. 3; Tr. 1319, 1329, 1409). As General Manager, Earnel Durden will devote his primary attention to the station's sales efforts, overseeing the station's sales staff while also ensuring that the station's programming and promotional activities are consistent and coordinated with those efforts (DBC Ex. 1, pp. 3-4); Tr. 1317, 1321, 1362, 1402-03, 1410). As Station Manager, June Durden will devote her primary attention to the station's programming efforts, ensuring in particular that its news and public affairs staff are aware of what is going on in the community and produce appropriate programming in response thereto (DBC Ex. 2, p. 3; Tr. 1364-65, 1403-04, 1413-14). She also will be primarily responsible for the station's financial affairs and will supervise its bookkeeper (DBC Ex. 2, p. 3; Tr. 1367, 1408). Although their primary responsibilities thus will differ, both Mr. and Mrs. Durden will be conversant with the totality of station operations and will make basic decisions, such as the hiring and firing of personnel, together (Tr. 1316, 1363, 1368, 1402-03, 1411). In the absence of Mr. Durden, salespersons will deal with Mrs. Durden, and in her absence staff involved in programming, public affairs and accounting will answer to him (Tr. 1318, 1321, 1323).

53. For the past four to five years, Earnel Durden has spent about five hours per week visiting high schools and jails to talk with youth about drug use and crime, as part of the San Diego Police Department's Community Service Program (DBC Ex. 1, p. 2; Tr. 1381-82).[25] He also has volunteered to represent the Chargers during the off-season (January-June) of the past four years, devoting about five hour per week speaking to high school students, youth groups and other organizations about drug abuse, the importance of education and community involvement (DBC Ex. 1, p. 3; Tr. 1384-85). Similarly, Mr. Durden has solicited funds from local businesses over the past several years, to help support at Helix High School, in San Diego County, where employment is offered to disadvantaged youths from broken homes (DBC Ex. 1, p. 2; Tr. 1383-84). For each of the past four-five years, Mr. Durden also has participated in the San Diego Police Department's Ride Along Program, and has volunteered the use of his "classic" 1957 Ford Thunderbird to attract patrons to an automotive exhibition whose proceeds have been used to rebuild the San Diego Aerospace Museum, after it had been destroyed in a fire (DBC Ex. 1, p. 2; Tr. 1383-84).

54. Mr. Durden has also appeared on a local radio program to discuss racial discrimination, appeared on a television commercial to support family planning, and participated in a Celebrity Bowling Tournament to benefit San Diego County's Child Abuse Prevention Foundation (DBC Ex. 1, p. 3). He is a Director of the San Diego Sports Program for local high school youth, and is a member of the Catfish Club (which is comprised of local Black businessmen), the local chapter of NAACP and the local chapter of the National Urban League (DBC Ex. 1, p. 3; Tr. 1385-86).

55. June Durden joined the local PTA organizations when she first moved to San Diego, and has maintained her active involvement to the present although her children presently are in college (DBC Ex. 2, p. 2; Tr. 1429). Aside from serving as an officer of the elementary school PTA for two years, she has initiated and implemented a parents' program to give special assistance to children with reading problems, has served (by invitation) on the Graduation Committee which established basic competency tests in fields such as math, history and English for students throughout the local High School District, and has participated in school assemblies (DBC Ex. 2, p. 2; Tr. 1429-30, 1433). Mrs. Durden also has participated as a volunteer with the local NFL Women's Club for the past several years, assisting the Health Department in treating elderly citizens and putting on fashion shows to help blood drives (DBC Ex. 2, p. 2; Tr. 1431-32).

Diversification

56. DBC has no attributable media interests (DBC Ex. 1, p. 4; DBC Ex.2, p. 4; Tr. 1343-44).[26]

Auxiliary Power

57. DBC will maintain auxiliary generators at their studio and transmitter sites to ensure continued emergency operations in the event of outages (DBC Ex. 1, p. 4; Tr. 1295, 1298).

SIMPSON COMMUNICATIONS LIMITED (SCI)

Background

58. SCI is a limited partnership whose general partner, Clementine Simpson, holds a 20% equity interest therein (SCI Ex. 1, p. 3). Its three limited partners and their respective interests are John Klinedinst (40%), Frederick Meiser (20%) and Richard Leverrier (20%) (*Id.*). Messrs. Klinedinst and Meiser are partners in the law firm, Klinedinst & Meiser (Tr. 1561). Leverrier is the Sales Manager at WGMS-AM/FM in Rockville, Maryland (official notice taken of Simpson November 4, 1985 amendment).

59. SCI's application was drafted by its communications counsel, who then sent it to Klinedinst & Meiser, where it was signed by Ms. Simpson on July 24, 1984 (Tr. 1452-53, 1476-77).[27] The application was not dated when she signed it, however, and Mr. Klinedinst later filled in the date of July 26, 1984 (CWR Ex. 11; Tr. 1604). She also signed a form Certificate of Limited Partnership on July 24, 1984 (Tr. 1476-78). The Certificate was dated as of July 24, and was then filed with the State of California on July 25, 1984 (SCI Ex. 2). The Certificate form merely states the name and address of the partnership and the identity of the general partner. It does not set forth any of the substantive terms and conditions of a partnership agreement.

60. The SCI application filed with the Commission identifies SCI's principals by name and type of partnership interest (*i. e.*, whether general or limited) and Exhibit 2 thereto recites that the principals "have a limited partnership agreement which *inter alia* formalizes the partnership structure (CWR Ex. 11). No "formal agreement had been written at that time, however (Tr.8250-51).[28] Indeed, a draft of an agreement was only circulated in the summer of 1985 (Tr. 1506, 1578-79, 1605-06, 8242, 8286). On the date of her deposition in this proceeding, conducted in San Diego on September 16, 1985, Ms. Simpson met with communications counsel at about 8:30 a.m. and executed a limited partnership agreement (Tr. 1480-81, 1486, 1535, 1544-45, 8242).

Integration

61. Clementine Simpson, the sole General Partner, will work full- time, a minimum of forty (40) hours per week, as the General Manager of the proposed station (SCI Ex. 1). As General Manager, Ms. Simpson will be responsible for the overall management of the station and will be directly in charge of implementing the proposed station's programs (SCI Ex. 1).

62. Ms. Simpson resides at 315 South 36th Street, San Diego, California (SCI Ex. 1). She is a Black woman (SCI Ex. 1).

63. Ms. Simpson has resided continuously in San Diego, California since 1946 (SCI Ex. 1). She attended grammar school, junior high school, high school and college in San Diego (SCI Ex. 1). Ms. Simpson intends to continue to reside in San Diego upon a grant of the FM application (SCI Ex. 1).

64. During her residence in San Diego, Ms. Simpson has participated in a number of local civic organizations (SCI Ex. 1). In 1953, she was a volunteer in the Urban League of San Diego. Her duties included clerical jobs at the Urban League offices in San Diego (SCI Ex. 1). During 1963, she was a worker at Heartland Human Services of San Diego. Her duties at Heartland involved fighting against discrimination in housing in the San Diego area. Ms. Simpson and her husband would respond to real estate advertisements for the rental or sale of residential real estate. Both are Black Americans. If they were told by the landlord or seller that the property was no longer available, Heartland would then arrange for a white couple to visit the address and attempt to rent or buy the property. In this manner, landlords or sellers of real estate who discriminated against Blacks could be discovered for appropriate legal action (SCI Ex. 1). Ms. Simpson was a member of both the Oak Park Elementary School and Knox Elementary School Parent-Teacher Associations during the period 1964 to 1968. These schools are located in San Diego (SCI Ex. 1).

65. She has been a member of the Messiah Lutheran Church of San Diego for approximately twenty five years. Ms. Simpson taught Sunday School at the Church for several years and was engaged in teaching the Summer Bible School for three years. She served as the Secretary of the Church Council in 1981. In addition, Ms. Simpson has been a member of the Lutheran Women Missionary League at the church from 1973 to 1983. During this period, she served at various times as the Secretary and Vice President of the League. The Lutheran Women Missionary League is a group of women who provide support services for the church, aid the sick and raise funds for the church (SCI Ex. 1). Ms. Simpson was an active member of the Mid-City Soroptimist Club of San Diego in 1983. The Soroptimist Club is an organization consisting of professional and business women, which engages in fund-raising for local charities and which also acts as a support group for other working women (SCI Ex. 1). Since 1980, Ms. Simpson has been a volunteer for the Girls Club of San Diego, Inc. The Girls Club is a non-profit organization which prepares young women for a role in society through the promotion of juvenile delinquency prevention and

career building. She has served on the Program Committee, Public Relations Committee and as a classroom instructor for the Girls Club and intends to continue her involvement with this organization (SCI Ex. 1).

Diversification

66. Neither Simpson Communications, Ltd. nor any of its principals have an ownership interest in a broadcast station or other medium of mass communications (SCI Ex. 1).

Auxiliary Power

67. The station will utilize auxiliary generating equipment in order to ensure continued operation in the event of a power failure (SCI Ex. 1).

NATIONAL UNIVERSITY (NATIONAL)

Background

68. National is a non-profit corporation of the State of California. Officers and directors of National are as follows:

Officers & Board of Trustees, National University

Dr. David Chigos
Dr. Winfield Johnson
Robert Abel, Esquire
Dr. Don Fagan
Lt. Commander Philip Boughton
Dr. Herb Day
Jess E. Cook
Andrew Chigos, M.D.
Dr. Norman Rutherford
Barbara Kerl

Integration

69. No National officer or member of its Board of Trustees will be integrated into the day-to-day operations of its proposed radio station (National Ex. 2; Tr. 23-24).

Diversification

70. No member of the Board or officer of National University has any media interests.

KALEIDESCOPE COMMUNICATIONS COMMITTEE (KCC)

Background

Applicant's Proposal

71. On July 27, 1984, KCC filed its application in the instant proceeding, wherein it stated that it was an unincorporated association whose members had agreed to "promptly form a corporation." The application recited that the corporation would have "20% common voting stock" and "80% preferred nonvoting stock." In Table I of Section II, of the KCC application, Evelyn V. Jackson, Rebecca McLemore, and Araminta Reed (the "Named Principals) were listed as the proposed "owners" by virtue of their ownership of 100% of the "voting stock," which represented 20% equity ownership of the applicant. *See* Exhibit 1 of KCC application (KCC Ex. 13). The application stated that the proposed ownership of non-voting preferred stock is "not being reported. but is available if requested." *Id.*

72. As of the "B cut-off date" when KCC filed an amendment (removing financial certification), the applicant had still failed to incorporate.

73. On June 26, 1985, KCC filed its Integration Statement proposing the integration of its three proposed voting stockholders -- Jackson, McLemore and Reed. Each of these three was listed as having a 33-1/2% "ownership interest in the applicant, with the explanation that "ownership will be of voting stock following incorporation." However, as of this date, KCC had still not incorporated or issued any stock.

74. Despite the July, 1984, promise to incorporate "promptly," the applicant did not incorporate until October 28, 1985 almost one year after the "B cut-off" date (KCC Ex. 31). On November 13, 1985, KCC filed a Petition to Amend reporting the incorporation of KCC (the incorporated entity will hereinafter be referred to as "KCC Inc.), and identifying Jackson, Reed and McLemore as voting stockholders.

75. According to KCC's counsel's statement at the hearing, the applicant did not act in any way as a *de facto* corporation before November of 1985 (Tr. 284).[29]

76. There were no stock subscriptions or other documents evidencing commitments to buy stock prior to November 11, 1985. *See e. g.*, Tr. 285, 1982. Stock was not issued until November, 1985, six months after the Integration Statement had been submitted and one year after the "B cut-off" date (KCC Ex. 34-37).

77. Although KCC's proffered amendment of November 13, 1985, stated that "non-voting" stock was authorized, the holder of the nonvoting stock was not identified in that document. Initially, a William Watts was to receive 80% of the non-voting stock (Tr. 1805). Later, however, Roger Christel was identified as the subscriber to 80% of KCC, Inc.'s stock (TBB Ex. 14).[30] On November 18, 1985, KCC submitted Christel's certificate for 8,000 shares in KCC, Inc. as KCC Ex. 37.

78. Because no corporation had been formed and KCC had not even acted as a *de facto* corporation as of the "B cut-off" date and as of the date for filing of Integration Statements, the Presiding Judge ruled at the Admissions Session that KCC could not be regarded as a corporation with two classes of stock for comparative purposes (Tr. 290, 311). Accordingly, the Presiding Judge rejected KCC's Exhibit 1, purporting to show ownership of the applicant based on a "voting" and "nonvoting" stock division, and ruled that Christel could not be shielded from consideration for integration purposes by any purported "nonvoting" stock ownership or by any statements now of nonparticipation (Tr. 219, 313, 315). The Presiding Judge specifically ruled that the record must reflect Christel's proposed ownership of 80% of the applicant entity (Tr. 313). The Presiding Judge formally rejected KCC's Petition to Amend insofar as it was meant to establish the incorporation of the applicant, by Order, released February 25, 1986 (FCC 86M-689).

79. Following the Presiding Judge's ruling at hearing that KCC could not be regarded as a corporate entity, with two classes of stock, KCC attempted to devise an

arrangement whereby Christel could continue to be assured of an 80% equity interest in the proposed station (in consideration for his provision of funds) even though KCC, Inc., of which he was to be 80% owner, was not technically the applicant.

80. Thus, the November 8, 1985 Stock Subscription (TBB Ex. 14) was "supplemented" on December 3, 1985. *See* "Supplement To Stock Subscription introduced as TBB Ex. 15. According to this "Supplement," the funds advanced to KCC Inc. by Christel would in turn be lent by KCC, Inc. to Jackson, McLemore and Reed d/b/a KCC. In the event of grant of KCC's application, KCC promised to "promptly file and diligently prosecute" an application (which would be *pro forma)* to the FCC for assignment of the construction permit and assets of KCC to KCC, Inc. and, on grant of such assignment, to "promptly effectuate" the conveyance (TBB Ex. 15, p. 2, Section (4)). Once such an assignment to KCC, Inc. was made, the loans to the Named Principals would be forgiven. *Id.* at Section (2)(b). (This entire transaction is hereinafter referred to as the "two-step procedure).

81. At the hearing, Christel testified that his acquisition of an 80% interest in the applicant and in the proposed station was a prerequisite for his willingness to fund the applicant, *i. e.*, that he would not be willing to make his financial commitment unless he was going to acquire such an 80% interest (Tr. 1667). Christel also testified that his understanding of the two step procedure described above is that its whole purpose is to enable him to acquire an 80% equity interest in KCC's proposed station as soon as possible (Tr. 1651).

82. After rejection of its original exhibit setting out its ownership structure (see Findings at paragraph 78), KCC offered into evidence a new exhibit, "KCC 11" to replace the rejected exhibit on ownership of the applicant. The Presiding Judge again rejected that part of the offered exhibit which stated that the applicant's ownership consisted only of the Named Principals. It was ruled the exhibit was unacceptable as proffered since Christel's 80% equity interest in the ultimate permittee must be regarded as a fact, based on the applicant's stated intent that he acquire such an interest (Tr. 2127, 2128).

KCC Membership

83. As noted, *supra,* in its application filed July 27, 1984 (KCC Ex. 13), KCC characterized itself as an "unincorporated association", "the Kaleidescope Communications Committee," whose members "will promptly form a corporation to be the applicant." The application states that the "Kaleidescope Communications Committee" was formed for the purpose of applying for a construction permit for the San Diego station. *Id.* Section 2, Question 5a of the FCC Form 301 specifies that if the applicant is in an unincorporated association with 50 of fewer members, all parties who "have membership or owner interests" must be disclosed. *Id.* In response to this instruction, only three persons were listed as parties to the application - Jackson, McLemore, and Reed. *Id.* No suggestion was given that these three were part of a much larger group of active and voting members of KCC.

84. Although the Named Principals were listed as proposed "voting stockholders," no stock had actually been subscribed to or issued at that date or as of the "B cut-off" date or Integration Statement date. *See* Findings paragraph 76.

85. Documents produced for the first time at the deposition of the Named Principals consist of minutes of meetings which clearly indicate that "Kaleidescope Communications Committee" was the name of a group of "members who had been meeting since December 6, 1983 (TBB Ex. 17), who met on July 23, 1984, four days before the application was filed (TBB Ex. 19), and met on November 12, three days before the "B cut-off date" (TBB Ex. 23). "Kaleidescope Communications Committee" was also the name of the unincorporated association listed on the FCC application as the applicant.

86. The minutes (TBB Exs. 17-23) reflect that the endeavor of applying for a station was seen as "group" project by all the members of the "Kaleidescope Communications Committee." While the structure of this unincorporated association was fluid,[31] the minutes reveal that at least 15 people were "members" of KCC. Ms. Jackson confirmed this fact when she testified at the hearing that KCC consisted of the following persons: Ms. Jackson, Ms. McLemore, Ms. Reed, Ms. Sherman, Mr. Gahn, Ms. Murray, Ms. Hart, Ms. Pearley, Ms. Morris, Reverend Lacey, Ms. Clark, Ms. Hardieway, Mr. Peters, Ms. Morris and Ms. Trotter (Tr. 1706-1709).

87. Both at the depositions and at the December hearings, the Named Principals confirmed that the minutes submitted as TBB Ex. 17-23 accurately reflect what took place at the meetings of the Committee. The accuracy of TBB Ex. 17 was confirmed by Evelyn Jackson and Rebecca McLemore (Tr. 1744 and 1884). The accuracy of TBB Ex. 18 was confirmed by Ms. McLemore and Ms. Jackson (Tr. 1893, 1747). The accuracy of TBB Ex. 19 was confirmed by Rebecca McLemore and Araminta Reed (Tr. 1951, 2088). The accuracy of TBB Ex. 20 was confirmed by Rebecca McLemore, Evelyn Jackson and Araminta Reed (Tr. 1959, 1756, 2092). The accuracy of TBB Ex. 21 was confirmed by Evelyn Jackson (Tr. 1764). The accuracy of TBB Ex. 22 was confirmed by Ms. Jackson (Tr. 1787). The accuracy of TBB Ex. 23 was confirmed by Rebecca McLemore (Tr. 1974).

88. During the May session of the hearings, after real party in interest and misrepresentation issues against KCC were designated on the basis, in large part, on the evidence of the minutes, KCC called five additional witnesses -- Mr. Gahn, Ms. Morris, Ms. Murray, Mr. Pearley and Mr. Peters --all of whom were identified in the minutes and by Ms. Jackson as "members" of KCC. Despite the repeated testimony by the Named Principals at the depositions and at the December hearing that the minutes were accurate, those five witnesses, many months later, either disputed the accuracy of the minutes or claimed not to remember the activities referred to in the minutes. For example, Gahn testified that many things recorded in the minutes "never happened" (Tr. 8517). Ms. Murray had no memory of events referred to in the minutes (Tr. 8827).

89. However, the minutes as well as testimony at the hearing, demonstrate the following:

(a) The minutes themselves show that all KCC members had voting rights (TBB 17-23). Ms. Jackson testified at the hearing that all members of the KCC had the right to vote on matters that were brought before the committee (Tr. 1735).[32] Such matters included, for example, the selection of a financial banker for the applicant. During the September, 1985 deposition, Ms. Jackson testified that Watts' proposal to make a financial commitment to

KCC was brought before and voted on by the "full committee." However, during the hearing, Ms. Jackson maintained that what she meant by "full committee was only the Named Principals (Tr. 1797).

(b) The minutes reveal, and the hearing testimony supports the fact that members of KCC not listed on KCC's application investigated possible sites for the station (Testimony of Ms. Jackson at 1772, testimony of Mr. Pearley 8669) and carried out a community ascertainment survey. Ms. Candace Trotter was in charge of that survey (Tr. 1727).

(c) Other "members" of KCC, not listed on the application, served on the committee to sell stock to the public, (Tr. 1725), (Testimony of E. Jackson) and (Tr. 8669), (Testimony of Ms. Pearley).

(d) As of the "B cut-off" and Integration Statement dates, members of KCC other than the Named Principals had made financial contributions either equal to or greater than those made by the Named Principals. Ms. Jackson conceded this fact (Tr. 1710, 1713). Ms. Jackson testified that all contributions made (including those by the Named Principals) were later returned, in late November or December of 1985 (Tr. 1869).

(e) Members of KCC, not listed on the application, contributed to the costs of publishing local public notice of KCC's application (TBB Ex. 23).

(f) Members of KCC, other than the Named Principals, were to attend workshops on broadcasting matters (TBB Ex. 20).

90. On July 23, 1984, only four days before KCC filed its application, Hawkins stated that the committee as a whole would be the "base group" which would compose the proposed applicant's "board of directors", "executive board" and "station management" (TBB Ex. 19). At the hearing, Ms. Jackson confirmed that Hawkins's statement was made to the full committee, and that at the time, she had not expressed any disagreement with the statement (Tr. 1753).

91. Ms. McLemore testified that the "Executive Board" of KCC referred to in the minutes initially included herself, Ms. Jackson and Ms. Dorothy Hart (Tr. 2063). Ms. McLemore testified that before the application was filed, Ms. Hart was replaced by Ms. Reed. *Id.* However, Ms. Reed testified that she was never a member of the "Executive Board" referred to in TBB Ex. 19, and further does not know what "Executive Board" refers to (Tr. 2090, 2091).

92. A few days before the "B cut-off date", members of KCC not listed on the application discussed using the name "Kaleidescope Communications Committee" to open a bank account for "our group" so that monies collected from "investors" could be secured and properly accounted for (TBB Ex. 23).

93. The minutes reveal and Ms. Reed (listed on the July 1984 application as "Secretary/Treasurer" of the applicant) testified that she did not perform the role of "Secretary/Treasurer" of KCC until at least September, 1985 (Tr. 2079). Rather, Ms. Hardieway performed those functions. Despite Ms. Reed's stated confusion about whether she was being asked about the role of "Treasurer" for the applicant or about the role of "Treasurer" for the "Committee", which she maintains was a different entity, KCC's witness, Ms. Murray, repeatedly testified that the "committee" referred to in the minutes never had a Treasurer (Tr. 8806, 8828-29).

94. At the September, 1985 depositions, Ms. McLemore testified that there existed only one entity called "Kaleidescope Communications Committee (Tr. 2053). Later, at the hearing, after pleadings had been filed which alleged misrepresentation in KCC's failure to list all members of the "Kaleidescope Communications Committee" on the application, Ms. McLemore maintained that there were really "two groups" named "Kaleidescope Communications Committee" – one, a group consisting of the Named Principals alone and another, the group reflected in the minutes, which included the Named Principals and others and was an "Advisory" committee only. However, the question posed at deposition seems quite clear and direct:

Q: As of July 27, 1984, was there more than one Kaleidescope Communications Committee?

A: No.

(Tr. 2048).

95. Further, McLemore conceded that nowhere in the minutes introduced into evidence or in any other document is there anything which reflects in any way that the "Kaleidescope Communications Committee," referred to in the minutes, was only an "advisory group" (Tr. 2036).

96. Although KCC's counsel was repeatedly asked by the Presiding Judge to produce *any* documents referring to or indicating appointment of an "advisory committee," none was produced (Tr. 2038). Gahn testified that there was never even any oral understanding spelling out the role of the so-called "advisory committee" (Tr. 8349).

97. Finally, although the Named Principals testified that actions were taken by the Named Principals in a smaller subgroup, no documents reflecting in any way the existence of a subgroup of these Named Principals or documenting any actions taken by them were ever produced. Indeed, despite repeated requests by the Presiding Judge for any such documents, the Named Principals all testified that there were no such documents.[33]

98. The KCC witnesses who testified at the May hearing session on the added issues maintained that the main purpose of the "committee" referred to in the minutes with respect to the KCC application was to provide "grass roots" endorsements for the applicant group. *See , e. g.*, testimony of Mr. Gahn, (Tr. 8340) and Ms. Murray (Tr. 8796) (the members of the "Advisory Committee" were "listened to and would help motivate the community.

99. Yet, the minutes reveal a consistent preoccupation with maintaining secrecy about the names of the membership and the existence of the group entitled "Kaleidescope Communications Committee" referred to in the minutes.

> the subject of confidentiality was discussed. Evidently details of our meetings have been discussed, thereby threatening the station's future. Rebecca McLemore stated that she hoped the group would not discuss our meetings outside our group, refrain from discussing details, be discrete.

See also TBB Ex. 20 (Mr. Peters requested that none of the committee members give anyone the members' names, addresses, or telephone numbers.) Gahn, a witness for KCC, confirmed during the second phase of the hearing, that there was indeed a desire to keep the members' name, as well as telephone numbers, confidential (Tr. 8548).

100. A motive for confidentiality about the members of the KCC is also revealed in the minutes and in KCC's witnesses' testimony. Ms. McLemore testified that they believed the license for the station would only be awarded to an all female group (Tr. 1965). *See* also Tr. 1773 (Testimony of Ms. Jackson to the same effect).

101. The minutes of the meeting of July 30, 1984, four days after the application was filed, state the following: "Gary has been with the group from the beginning but was told that he couldn't be an officer. Even after he's given time, energy and money he was told 'no' because we wanted a female slate" (TBB Ex. 20). Gahn, however, testified, almost two years after the meeting occurred, that he never asked to be an officer, and that the statement was referring to just a hypothetical situation (Tr. 8378).

102. The testimony of the KCC's witnesses in the May hearing on the added issues is inconsistent with the testimony of the Named Principals at the deposition and at the hearing, and also contains inherent contradictions.

103. For example, Gahn testified that the KCC "advisory" committee was engaged in community activities other than activities connected with the application for the proposed station (Tr. 8386). In contrast, Ms. Murray and Ms. Pearley testified that the only purpose of KCC was to serve as an advisory group to the applicants for a radio station, and that it had no other purpose (Tr. 8815, 8663).

104. Gahn testified that although the minutes refer to a single meeting, there were often two meetings going on at the same time, with the "advisory group" meeting in one room, while the three named principals met in the "kitchen," with Ms. Hardieway going back and forth taking minutes for both meetings, which minutes later got commingled (Tr. 8532, 8518).

105. However, as noted above, at the hearing six months earlier, none of the three principals had referred to any such "kitchen caucuses" or any "commingling" of the minutes and all agreed that the minutes, as submitted, were basically accurate. *See* Findings at 87. Moreover, according to the minutes, the minutes of several meetings were read to and approved, with only minor corrections, by the members of KCC, the next week after the meetings referred to in those minutes took place (see *e. g.*, TBB Ex. 18, 19, 20 and 21). KCC's witnesses could offer no explanation of why no KCC member at the time pointed out the "numerous" errors which KCC now asserts those minutes contain (see Tr. 8420-8424).

106. Ms. Morris testified that as of the December, 1983 meeting, she did not know which members were to be the applicant's principals (Tr. 8580). Thus, while she has termed the "Kaleidescope Communications Committee reflected in the minutes of this meeting "advisory," she did not even know who she was going to advise.

107. None of the three Named Principals had any financial "stake" in the applicant as of either the "B cut-off" or the filing date for Integration Statements. As of the above-relevant dates, neither Jackson, McLemore or Reed had signed any documents legally obligating her to contribute any funds whatsoever to the applicant in the future (Tr. 1718-1720, 2080, 1982). Moreover, although the Named Principals made contributions ranging from90 and500 to the applicant (Tr. 1710-1714), these minimal contributions were apparently regarded as loans, not investments, as evidenced by the fact that the money was promptly returned to them as soon as a financial backer was found in 1985 (Tr. 1869).

108. None of the Named Principals had established or had knowledge of any bank account in the applicant's name until after the Admissions Session, a few days before they were to testify at the hearing (Tr. 1723, 1803, 1808, and 2084). (Despite the letters submitted as KCC Ex. 19-21 in which Watts instructs the Named Principals to open a bank account, KCC's witnesses testified that KCC did not have a bank account when Watts sent his money, and that the "first" time the applicant had a bank account was right before the hearing.) While it is unknown who was paying the applicant's expenses, including legal fees, transcripts, etc., it *is* clear that none of the Named Principals was involved in the arrangements for payment of those expenses. The applicant's counsel stated on the record that the one time financial backer, Watts, who initially apparently funded the applicant's deposition expenses, made a3,000 payment directly to counsel, apparently without the knowledge or involvement of the Named Principals (Tr. 296).[34]

109. The record evidence indicates that none of the Named Principals was involved in obtaining a financial commitment for the applicant or in negotiating with the series of proposed financial backers who have surfaced and disappeared at various points along the way. The Named Principals seem consistently to have relied on the assurances of third parties about proposed financial backers for their endeavor. Initially, a Mr. Hawkins,[35] was engaged in principal effort to raise funds for the applicant (Tr. 1728). At one point it was understood by Ms. Jackson that Hawkins had obtained a commitment from the entertainer, Stevie Wonder (Tr. 1728, 1983). Hawkins and Stevie Wonder seem to have disappeared along the way. Later, KCC's counsel made contact with William Watts to be the financial backer for the applicant (Tr. 1804). None of the Named Principals ever met Watts in person (Tr. 1805, 1982, 2087). Watts too eventually disappeared. Ms. Jackson testified that she was told by KCC's counsel that Watts was not in a position to be the backer (Tr. 1806). Next KCC's counsel produced Christel (Tr. 1639, 1640). None of the three principals had ever met Christel prior to the hearing (Tr. 1806).

110. Christel testified that he made the decision to fund the KCC application[36] before he had even *spoken* to, let alone met, any of the so- called "Principals":

A: I agreed to go ahead with it. I believed Evelyn Jackson called me just to introduce herself after it was determined that we were going to go ahead with it, probably two or three weeks after that.

Q: You had already made the decision to participate in this application?

A: Yes.

Q. Before you actually spoke to Ms. Jackson?

A: Yes.

Q. Before you actually spoke to Ms. Jackson?

A: That's correct.

Q: Had you spoken to any of the members of the Kaleidescope Communications Committee prior to agreeing to join in this application?

A: No, I didn't.

(Tr. 1640).

111. The only station budget Christel has seen is the one which, in his understanding, was prepared by the applicant's counsel (Tr. 1682).

112. The Harris Corporation, which is to supply all the equipment for the proposed station, seems unaware that Jackson, McLemore and Reed are the only named principals of KCC. According to the documents submitted by KCC in its November 13, 1985, "Petition to Amend" supporting its certification of financial qualifications, the Harris Corporation equipment proposal, dated August 14, 1985, was sent directly to "Mr. Bill Watts," not to any of the named principals. After Watts vanished, the Harris Company sent a letter directly to Christel, personally offering him financing terms on the equipment (Official notice taken of November 13, 1985 Petition to Amend and associated attachments).

113. The Named Principal seem to have been totally uninvolved with all financial negotiations. For example, Jackson, McLemore and Reed were not involved in the discussions that resulted in a change of the repayment terms on loans that Christel agreed to make, through the shell entity of KCC, Inc., to them, despite the fact that they are to be personally liable on the loans unless the construction permit is assigned to KCC, Inc. (TBB Ex. 14, 15; Tr. 1653).

114. Further, according to Christel's testimony, he apparently did not feel it necessary to meet with the Named Principals or even to find out much, if anything, about their business experience or backgrounds. He did not meet the Named Principals until the eve of the hearing (see *e. g.*, Tr. 1806). Moreover, despite Christel's testimony that he believes Jackson will constitute the "management" of the proposed station (Tr. 1679), he testified that he did not know "anything about her business background" prior to making his commitment to the applicant (Tr. 1679). In addition, Christel testified that he has never sat down and discussed plans for operation of the station with Ms. Jackson, the proposed "General Manager" (Tr. 1680). Christel testified that he believes that if the Named Principals don't run the station in a proper manner, he will be able to take action to force them to do so (Tr. 1674).

115. As noted above, once the applicant is granted a construction permit, it will immediately assign the permit to KCC, Inc., according to the explicit statement of KCC's counsel (Tr. 2125), the testimony of Roger J. Christel (Tr. 1651) and the documents produced by KCC and submitted as TBB Ex. 14 and 15. The By-laws of KCC Inc., the corporate entity, are remarkably silent on the issue of the nonvoting shareholder's involvement in the media business of the corporation (see KCC Ex. 33). Similarly, Christel's Stock Subscriptions, TBB Ex. 14 and 15, contain no provisions insulating him from management of either KCC Inc. (the intended permittee) or the proposed station.

Integration

116. KCC's integration proposal is based on the proposed integration of Ms. Jackson, a black female, Ms. Reed, a Hispanic female, Ms. McLemore, a black female. Each of these individuals proposes to serve in managerial positions at the proposed station, on a full-time basis. Ms. Jackson is proposed as general manager; Ms. McLemore, as program director; and Ms. Reed as sales and business manager (KCC Ex. 2, 3, 4).

117. Ms. Jackson has lived in San Diego for the last 20 years. Since 1972, she has been an inspector and job coordinator for Blue Ribbon Services, a janitorial service. Since 1977, she has worked as a coordinator for the school systems in the San Diego area for test and integration monitoring. She will terminate these employments prior to commencement of operations if KCC receives the construction permit (KCC Ex. 2).

118. Ms. Jackson has been involved in a number of civic and community activities in San Diego. These activities include member of the San Diego City School Racial Integration Commission (1977-1982); member of San Diego Regional Criminal Justice Planning Board (1977-1981); member of Southeast Police Community Task Force Committee (1979-1980); member of County Mental Health Committee; President of Skyline Hills Recreational Council (1980-1985); Coordinator of Skyline Area Community Watch Program (1980- present); member of the Southeast Task Force Committee (1970-present); member of Skyline Paradise Hills Planning Committee (1977-present); member of Skyline Park Town Council including service as president (1969-1984); member of Schools Advisory Council (1979-1982); member of Councilmen Advisory Committee (1970-1980); and member of League of Women Voters (1976-1984) (KCC Ex. 2).

119. Ms. McLemore has lived in San Diego for the last 27 years. From March 1984 to the present, Ms. McLemore is assistant manager of a religious supplies business, responsible for public relations and sales. Her prior employment (December 1969-March 1984) was in the Billing and Collection Department of the U.S.C.D. Medical Center, a teaching hospital (KCC Ex. 3).

120. Ms. McLemore's civic and community activities in San Diego include member of a local chapter of BIG, Blacks in Government (1984-present); member of Skyline Hills Community Association (1964-1966); member of a local sorority chapter (1979-present); President of a local PTA (1959-1962); member of United Community Democratic Club (1983-present); and sponsor of YMCA teen club (1962-1964) (KCC Ex. 3).

121. Ms. Reed has lived in either San Diego or the San Diego metropolitan area since 1966. Ms. Reed has been unemployed since May 1985. Her last job was as a clothing presser; prior to that she was a teacher's aide/playground supervisor (KCC Ex. 4, Att. B; Tr. 2082-83). She has been involved in local and national activities of the Republican Party since 1982 and has participated in the "Meals on Wheels" program since 1980 (KCC Ex. 4, Att. C). In addition, she has taught a church Sunday School class (1971), served as a P.T.A. secretary (1974-75), and been a Club Scout Den Mother, for which she won an award (1976) (*Id.*).

Diversification

122. KCC and its principals have no interest in or connection with any other mass media entity (KCC Ex. 11).

Auxiliary Power

123. KCC will have auxiliary power generating equipment at its studio and transmitter sites (KCC Exs. 6. 7).

ECHEVERRIA BROADCASTING CORPORATION (EBC)

Background

124. Echeverria Broadcasting Corporation (EBC) is a California corporation. EBC's directors, officers and voting shareholders are as follows:

Name	Office	Bd. of Dir.	Ownership
Ben Echeverria	President/ Treasurer	Director	60%
Ernestina Real	Vice President	Director	20%
Mary Hubbard	Secretary	Director	20%

Of a total of 500 shares of stock authorized, 100 shares have been purchased. Ben Echeverria owns 60 shares; Ernestina Real and Mary Hubbard, each own 20 shares of EBC stock. The three principals paid for their stock at a rate of 100 per share; Mr. Echeverria paid6000 for his stock; Ms. Real and Ms. Hubbard respectively paid2000 for their stock (EBC Ex. 1, p. 1; Tr. 2304- 05). EBC and its shareholders have entered into an agreement with Diane M. Clary which provides that the corporation will issue a convertible subordinated debenture to Ms. Clary upon her payment of 6000 to the corporation. The debenture will be convertible to non-voting stock in the corporation no earlier than five years following the date of issuance and no later than ten years following the date of issuance (EBC Ex. 1, pp. 14-33). EBC has not yet issued the debenture to Ms. Clary; at the time Ms. Clary provides EBC with6000, the debenture will issue (Tr. 2314).

125. Ben Echeverria learned of the availability of the San Diego radio facility from a long-time friend, Patrick Clary, the husband of Diane Clary, during a social conversation in which Mr.Clary inquired whether Echeverria knew of anyone who might be interested in applying for the station. Shortly after his conversation with Mr. Clary, Echeverria decided that he, himself, was interested in applying for the station. He contacted Mr. Clary, informed him of his interest and asked Mr. Clary for advice about the process of applying for a station since he knew that Mr. Clary was knowledgeable in this area.[37] They also discussed the kinds of legal entities which would be formed, and Echeverria decided to form a corporation for purposes of applying for the station. He asked Mr. Clary to serve as corporate counsel because of Clary's expertise in the area of securities law (Tr. 2133-35; 2387-88). Prior to the incorporation of EBC, Echeverria met with the Clarys and Gene Bechtel, communications attorney. They discussed the process and cost of prosecuting a broadcast application. The decision was made to seek out other individuals to join Echeverria and Ms. Clary in a group to apply for the station. Discussions concerning ownership included that Echeverria and Ms. Clary would have equal ownership interests which would be subject to reduction when other persons joined the group, and that Echeverria would control the group; Ms. Clary's intent was to participate as an investor only (Tr. 2492-96, 2512). Sometime thereafter, and prior to July 22, 1984, Mr. Clary suggested to Echeverria, consistent with Ms. Clary's intent, that EBC issue to Ms. Clary a subordinated debenture, convertible to stock in the corporation, rather than Ms. Clary taking an equity interest in the corporation. They discussed the amount of6000 as the sum of the debenture -- an amount equal to Echeverria's stock payment -- Echeverria agreed to the suggestion (Tr. 2295-99).[38] Echeverria, serving as the incorporator, prepared and filed EBC's articles of incorporation on November 14, 1983 (EBC Ex. 1, p. 34; Tr. 2139-41). Echeverria thereafter appointed himself the President and sole director of EBC (EBC Ex. 1, pp. 34-35).

126. Echeverria invited Mary Hubbard, who he had known for several years, to become a principal of EBC. Echeverria had been informed by a minister he knew that Ms. Hubbard might have an interest in participating (Tr. 2141-43; 2792). Ernestina Real was invited to join in the venture after mutual friends of Ms. Real and the Clarys informed Echeverria that Ms. Real might be interested in participating (Tr. 2146, 2383, 2696). Echeverria called a special meeting of the Board of Directors of EBC on July 22, 1984 (Tr. 2971). Ms. Hubbard and Ms. Real, in attendance, were elected directors and officers. The Board authorized the opening of a corporate bank account, retention of legal counsel and the preparation, filing and prosecution of an application for the San Diego radio station (EBC Ex. 1, p. 36; Tr. 2792-96). Patrick Clary, general counsel, and Diane Clary also attended the meeting of July 22, 1984. The three EBC principals and Ms. Clary, entered into an agreement (the July 22 Agreement) providing for the purchase of voting stock by each of the three principals and the issuance of a convertible subordinate debenture to Ms. Clary in return for her payment of6000 to the corporation. The conversion of the debenture to EBC stock could occur no earlier than five years following the date of issuance and no later than ten years following the date of issuance. Following the meeting, the July 22 Agreement was reduced to writing by Mr. Clary (EBC Ex. 1, pp. 14-23; Tr. 2299-2300). It has been amended twice. The first amendment, dated August 18, 1984, provides that no interest will accrue on the principle of the debenture to issue to Ms. Clary (EBC Ex. 1, pp. 24-25). The second amendment, dated November 13, 1984, provides that (1) Ms. Clary will be entitled only to non-voting stock upon conversion of the debenture; and (2) the corporation will amend its Article of Incorporation to authorize the issuance of non-voting stock (EBC Ex. 1, pp. 26-28).[39]

127. In February 1985, at Echeverria's suggestion, the annual meeting of EBC shareholders was held in Las Vegas, Nevada. The reason for their gathering there was to tour the facilities of Station KUDO-FM with Diane Clary and see first-hand the operation of a radio station (Tr. 2539, 2863). The shareholders formally met again in June 1985. The meeting was also attended by Mr. and Mrs. Clary who were in San Diego on other business. The meeting was convened for the primary purpose of discussing depositions in this proceeding, for which each of EBC's shareholders and Ms. Clary had been noticed (Tr. 537-38, 2864).

128. Echeverria established a corporate checking account which requires his signature and Ms. Hubbard's on all checks. Echeverria, as corporate treasurer, receives all

bills. Ms. Hubbard also sees bills at time of payment when Echeverria provides her with information regarding the purpose for each check written on the account (Tr. 2337, 2383-84). Echeverria had discussions with an officer of the bank used by EBC and obtained a letter from the bank to provide for the financing of the costs of construction and operation of EBC's station (Tr. 2312). Echeverria also retained the services of a consulting engineer for the corporation (Tr. 2325-26).

Integration

129. EBC proposes to integrate each of its three voting shareholders in managerial positions at the station as set forth below. Consistent with Diane Clary's potential status as an investor with the right to hold a non- voting stock interest in the corporation, she testified that she has no intention to take part in the conduct or control of the business of EBC, including the day-to-day management of the San Diego station (EBC Ex. 5, p. 1). The policies and procedures for the station's operations will be set by the directors and officers of the corporation, Echeverria, Ms. Real and Ms. Hubbard (EBC Ex. 2, p. 3). To the extent that Ms. Clary will have any involvement in EBC's business, she will merely act as an information source if asked (Tr. 2549).

130. Ben Echeverria will serve full-time (a minimum of 40 hours per week) as the General Manager of EBC's radio station with responsibility for overseeing the day-to-day operations of the station and the supervision of employees. He will also be responsible for implementing the station's Equal Employment Opportunity Program (EBC Ex., 2, p. 3). Echeverria is a Hispanic American who has been a resident of the proposed city of license, San Diego, since 1968, except for a period between 1978 and June 24, 1985, during which time he resided in Ramona, California, which is located within the service area of EBC's proposed station (EBC Ex. 2, p. 1). Echeverria earned a Bachelor's Degree and a Master's Degree in counseling and psychology from the University of Nevada at Reno. He earned a Juris Doctor degree from California Western University Law School in San Diego. He is a member of the Bar of California and has been a practicing attorney in San Diego since 1972. Echeverria will significantly reduce or, if necessary, terminate his law practice so that he can carry out his full-time commitment to EBC's station (EBC Ex. 2, pp. 1-3).

131. Echeverria has been involved in the following civic and community organizations in and around San Diego:

Legal Aid Society of San Diego, Inc.

- Vice President of Board of Directors (1982)

- Chairman of Committee which founded the Lawyers Referral Service (1982);

Phi Alpha Delta Law Fraternity, San Diego Chapter

- Member (1968 to present);

Pro bono representation of Christ United Presbyterian Church, San Diego

- related to Head Start Program administered by the Church (1983 to present);

Phi Delta Kappa, professional educational fraternity, San Diego Chapter

- Member (1968 to present);

America's Finest City Celebration, annual San Diego celebration

- operated a booth (1976, 1977);

State Bar of California

- Member (1972 to present); Member, first committee for pre-paid legal services;

The "Doc's Prescriptions" Band, a non-profit musical group which donated its services to various benefits, including annual March of Dimes fundraiser, Italian American Federation and "COMBO" (Combined Arts and Educations Council of San Diego)

- Member (1973-81);

E Clampus Vitus, San Diego chapter, an organization involved in preservation of local history and local celebrations of historical events;

- Member (1971 to present);

The Wilderness Society, San Diego Chapter

- Member (1984 to present);

The Sierra Club, San Diego Chapter

- Member (1983 to present).

(EBC Ex. 2, pp. 2-2A).

132. Ernestina M. Real will serve full-time (a minimum of 40 hours per week) as the Director of Programming and Production of EBC's radio station and in that capacity she will direct and supervise the station's programming and program production activities (EBC Ex. 4, pp. 3-4). Ms. Real is an Hispanic American female, born in 1936. She is a life-long resident of San Diego. She attended San Diego Junior College and trained for two years at the John Robert Power School for Self Improvement located in San Diego. Since May 1972, Ms. Real has owned and operated her own business, the Tina Real Agency, Talent Agency in San Diego. The agency is franchised by the Screen Actors Guild (SAG) and the American Federation of Television and Radio Artists (AFTRA) and handles the booking of announcers, actors and performers for radio and television voice-overs, on-camera performances, features and industrial films. Ms. Real will significantly reduce or, if necessary, terminate her involvement with the Tina Real Agency in order to work at least 40 hours per week at EBC's radio station (EBC Ex. 4, pp. 1-2).

133. Ms. Real has participated in the following civic activities or organizations in San Diego:

The Mexican-American Foundation

- Board Member and Recording Secretary (1974-78);

- Volunteer in production of and solicitation of funds for annual benefit program for the Chicano Community Health Center (1971-73); and

- Recipient of Woman of Distinction Award at the 1974 benefit program;

Muscular Dystrophy Association

- Volunteer for the annual telethon; contributed models from talent agency for work on the telethon (1972-73);

Mission Bay Associates. San Diego

- Judge of the 1972 Mission Bay Photo Festival;

Central City Association of San Diego

- Judge of the 1975 "Easter Promenade";

Children's Home Society of California, Las Tias Auxiliary, San Diego

- Participated in and provided models for a 1974 benefit for the Society;

Combined Arts and Educational Council of San Diego

- Participant in 1976 television auction;

Advertising Club of San Diego

- Member (1971-79);

National Academy of Television Arts and Sciences, San Diego Chapter

- Talent coordinator for 1979 awards show;

- Membership Chairman Z(1980-82);

Advisory Board of the San Diego Motion Picture and Television Bureau

- Member (1982).

(EBC Ex. 4, pp. 2-3).

134. Mary W. Hubbard will serve full-time (a minimum of 40 hours per week) as Director of Sales and Community Relations for EBC's station, and in that capacity she will direct and supervise the station's sales and community relations activities (EBC Ex. 3, p. 4). Ms. Hubbard is a black American female, and has resided in the San Diego area since 1972. From 1972 to 1978, Ms. Hubbard resided in the city of San Diego. Since 1978, she has resided in La Mesa, California, a community adjacent to the city of San Diego and situated within the proposed service of EBC's station (EBC Ex. 3, p. 1).

135. Ms. Hubbard earned a Bachelor of Arts degree from Georgia State University where she majored in journalism. Her education included coursework in radio station management. She was inducted into the Sigma Delta Chi Professional Journalism Society in 1971 and remains a member of that organization. Since 1972, Ms. Hubbard has taken courses at San Diego State University and the San Diego community College, including scriptwriting and editing, careers in television and motion picture, personnel management, small business management, and public policy. Ms. Hubbard has been employed with the San Diego City Schools since 1972. She has held the position of Administrative Services Supervisor since 1975. In the event EBC obtains the construction permit for the San Diego station, Ms. Hubbard intends to terminate her current employment so that she can devote full-time to EBC's station (EBC Ex. 3, pp. 1-2, 4).

136. Ms. Hubbard's civic activities in San Diego are as follows:

Christ United Presbyterian Church of San Diego (Many church-sponsored activities involve the San Diego community-at-large, not only church members.)

- Member (1972-present);

- Sunday School Teacher (1979-present);

- Chairperson, Parent Council (1985-present);

- Director, Summer Youth and Bible School Program (1980-1981);

- Chairperson and Volunteer for the Study Center Advisory Committee (including the Golden Hill Study/Tutorial Center, a community tutorial- educational center in San Diego)

- Chairperson, Black History Month Observance (1978);

- Chairperson, Educators Appreciation Observance (1979);

- Certificate of Honor (1979);

- Mother of the Year Award (1980);

Elementary Institute of Science

(A private organization in San Diego which conducts basic science classes for elementary school children.)

- Member, Auxiliary Committee (1981-present);

- Volunteer (1981-present);

United Negro College Fund (San Diego Fund Raising Committee):

- Volunteer (1982-present);

- Secretary of First San Diego Telethon Planning Committee (1982);

- United Negro College Fund Service Award (1982);

Martin Luther King Celebration Committee (San Diego):

- Co-Chairperson, 1986 Planning Committee for First National Observance;

Cub Scouts of America

- Organizing member of Pack 432 (San Diego) (1977);

- Volunteer (1977-1981);

Partners in Public Education (San Diego)

(A coalition of educational organizations promoting the improvement of public education in San Diego and San Diego County.)

- Member (1982-1984);
- Steering Committee (1982-1984);
- Initiated the recognition of High School Valedictorians in San Diego (1982);

Association of Black Administrators (San Diego)

- Member, Executive Board of Directors (1982-1983);
- Treasurer (1982-1983);

San Diego Administrators Association

- Member, Board of Directors (1981-1984);
- Second Vice President (1983);
- Chairperson, Public Relations Committee (1981-1982);

Delta Sigma Theta Sorority

- Life-time member (national organization);
- Member (local San Diego chapter).

(EBC Ex. 3, pp. 2-4).

Diversification

137. Neither EBC nor any of its shareholders holds an interest of any kind in any medium of mass communications (EBC Ex. 1, p. 2; Ex. 2, p. 3; Ex. 3, p. 4; Ex. 4, p. 4). As previously noted, Diane and Patrick Clary were principals of Quality Broadcasting Corporation (Quality), licensee of Station KUDO-FM.

AMIGOS DE SAN DIEGO (AMIGOS)

Background

138. Amigos de San Diego (Amigos) is a limited partnership formed under the laws of the State of California. Amigos has two general partners and one limited partner. David J. Miramontes holds a 15% general partnership interest and Janis L. Horning holds a 10% general partnership interest in Amigos.[40][41] Richard P. Kale Media Management Consultants, Inc. (Kale Media Management), a Washington corporation, is the sole limited partner and holds a 75% partnership interest. Richard P. Kale is 50% owner and serves as president and a director of Kale Media Management. His wife, Jan Horning, is also a 50% owner of Kale Media Management and serves as secretary/treasurer and a director of that corporation (Amigos Ex. 1; Tr. 2568, 2874, 2875, 2876).

139. Amigos is the creation of Richard P. Kale. He put the applicant together, and through he and his wife's wholly-owned company, Kale Media Management, he has financed the prosecution of the resulting application.

140. Richard Kale, an experienced broadcaster and former resident of San Diego, contacted his childhood friend, David Miramontes, and consulted his wife, Jan Horning, suggesting that they be general partners in a San Diego broadcast application[42] (Tr. 2568-71, 2587; SDB Ex. 14, pp. 9-10, 15-16). Kale told Miramontes that the applicant should be structured as a limited partnership (TR. 2574-75). Kale suggested the different ownership interests each partner should hold in the applicant (Tr. 2583). On his own, Kale retained the services of Kale Media Management's counsel to serve as Amigos' communication counsel (Tr. 2579-2580, 2904). He likewise secured the services of an engineer on behalf of the applicant (Tr. 2904; SDB Ex. 14, p. 32). He oversaw the preparation of Amigos' application. Kale helped to put the application together, wrote the programming section and reviewed the entire application when it was completed and ready to be filed (Tr. 2628, 2903-2905; SDB Ex. 14, pp. 31-32). He even chose the applicant's name (Tr. 2611; SDB Ex. 14, p. 44). Miramontes' only involvement in the application was his preparation of the EEO portion. In fact, he did not see the application in completed form until a copy was sent to him after it was filed (Tr. 2630-31).

141. Kale did a financial analysis of the costs involved in constructing and operating a station[43] and provided those figures to Amigos' general partners to assist them (Tr. 2585-86, 2883).[44]Through his company, Kale Media Management, he secured the financial backing for the construction and operation of the station (Tr. 2600-2601; SDB Ex. 10). Amigos has not looked to anyone else for backup financing (Tr. 2658, 2892).

142. From the time the Amigos application was filed until the hearing (a total of 16 months), the general partners, David Miramontes and Jan Horning, had a total of one face to face meeting. That occurred in October 1985, when they saw each other at the time they were deposed in San Diego. On the other hand, Miramontes did meet with Kale twice during this period. On the second occasion, in September 1985, they discussed Amigos' business plans as well as how the application could be strengthened. At that time, Miramontes sought out advice from Kale as to what he and Ms. Horning should do (Tr. 2659-2660). All three principals communicated about the application a number of time in 1984 and 1985 by telephone. Sometimes Miramontes spoke solely with Kale or Ms. Horning and sometimes they had three-way conversations (Tr. 2660-62). During these conversations, Miramontes from time to time sought out Kale's advice (Tr. 2662). Decisions affecting the application have always been made by consensus of all the principals (Tr. 2663-64).

143. Kale has served as an advisor and consultant to the general partner throughout the application process. Further it is his hope that his consulting company, Kale Media Management, will serve as a consultant to Amigos after grant. This is not an unreasonable expectation considering that one Amigos general partner, who is Kale's friend, admittedly knows nothing about broadcasting and the other general partner, Kale's wife, is the part- owner, and is an officer and director of Kale Media Management (Tr. 2586-87; SDB Ex. 14, pp. 7-9, 25-26). In fact, Miramontes stated that he would go to Kale for guidance in performing his general manager functions (Tr. 2667).

144. Kale's company, Kale Media Management, has agreed to advance, and, in fact, has provided virtually all of the finances for the prosecution of Amigos' application (SDB Exs. 10, 11; Tr. 2613, 2619, 1913). In a July 30, 1984, letter to David Miramontes on Kale Media Management stationary, Jan Horning advised Miramontes that Kale Media Management would be paying all of the expenses related to the project. When Ms. Horning signed this letter, she believed that she was signing on behalf of Kale Media Management and was obligating the limited partner to finance the Amigos application (SDB Ex. 10; Tr. 2911-12). By December 1985, Kale Media Management

had been called upon on seven different occasions to make loans to Amigos to pay bills (SDB Ex. 11; Tr. 2895).[45]

145. Originally, it was intended that the general partners' only financial contributions to the applicant would be in the form of promissory notes to Amigos (Tr. 2589, 2590, 2611). Miramontes' original capital contribution in August 1984 was500, which he provided in the form of a one- year promissory note. When the note came due in 1985, it was extended by Amigos. No payments have ever been made on that note (SDB Exs. 9, 10, 12; Tr. 2603-2604). Ms. Horning testified that she expects that the note will continue to be extended until the end of this proceeding (Tr. 2925-26). Miramontes signed a demand note on July 24, 1985 to Amigos in the amount of 1,500. Nothing has been paid on this note either (SDB Ex. 9; Tr. 2605). Ms. Horning signed a promissory note to Amigos on July 26, 1985, in the amount of 2000 (SDB Ex. 13; Tr. 2622).[46] She has not made any payments on that note.

146. Amigos has two checking accounts. One is located in Seattle. Ms. Horning and Kale Media Management opened that account after the application was filed in August 1984. Ms. Horning is the signatory on this account. Large bills, such as those for legal expenses, are paid out of the Seattle checking account (SDB Ex. 10; Tr. 2590-92, 2594, 2597). At the time of the hearing in December 1985, Miramontes had no idea what amount of money was in the Seattle account (Tr. 2598).

147. Miramontes later (August 1985) opened a second checking account in San Diego in the amount of500 to handle small out-of-the-pocket type of miscellaneous expenses. By the time of the hearing, Miramontes had written a total of two checks on that account totalling approximately 34. One of the checks was for clerical supplies, the other to pay for the cost of printing checks for the account (Tr. 2590-91, 2596, 2598, 2605-06).

148. The Seattle checking account is funded by monies loaned to Amigos by limited partner Kale Media Management. Every time that Amigos needs money to pay a bill, Ms. Horning, as a principal of Kale Media Management, writes a check to Amigos, which Ms. Horning, as a general partner of Amigos, then deposits in Amigos' Seattle check account.[47] Amigos, through Ms. Horning, then issues a promissory note to Kale Media Management for the amount loaned (SDB Ex. 11; Tr. 2615-2617, 2649-2651, 2896-2897). Prior to establishing the above procedures, Kale Media Management occasionally paid bills directly rather than having money deposited in an Amigos account (Tr. 2897).[48]

149. The San Diego Amigos checking account has been funded by Miramontes. The34 in checks drawn from this account are the only funds expended by Amigos in the prosecution of the application whose source was not Kale Media Management (Tr. 2652, 2690, 2899, 2917).[49]

150. Miramontes stated that the reason Amigos has two checking account is that Kale and Ms. Horning wanted to have an account close by where they would be able to pay the applicant's bills (Tr. 2594-95, 2597).

151. Ms. Horning keeps the financial records for both Amigos and Kale Media Management (Tr. 2897). They are kept in the offices of Kale Media Management where Kale has access to them (Tr. 2903). Kale provides advice to Ms. Horning with respect to the payment of Amigos' bills (SDB Ex 14, p. 71).

Integration

152. Amigos proposes the full-time (at least 40 hours per week) integration of David Miramontes and Jan Horning. Miramontes, a man without any prior broadcast experience, is proposed as General Manager. Ms. Horning is proposed as Station Manager. However, Amigos does not describe anywhere what specific responsibilities and duties Miramontes will fulfill in his management position (Amigos Ex. 2; Tr. 2667).[50]

153. Moreover, Miramontes testified that he had no idea what he would be doing as General Manager other than supervise Ms. Horning, a job which he admitted would not take 40 hours a week to complete (Amigos Ex. 2; Tr. 2669-2670, 2692-2693). Miramontes claimed that, because of her prior broadcast experience, Ms. Horning in her role as Station Manager would actually be in charge:

"Judge Chachkin: Well the question is, how is – what will she do as station manager? How is that different from what you are going to do as general manager? First of all, what would she do as station manager? Have you had any discussions about what she is going to do as station manager?

David Miramontes: Specifically, no. She runs the station.

Judge Chachkin: So, she is going to be running the station?

David Miramontes: The programming and hiring the people. Taking affirmative action. Supervising personnnel." (Tr. 2670).

* * *

"Mr. Bruiniers: Do I understand your testimony correctly that you see Ms. Horning' role as station manager to supervise the actual day- to-day operations of the business of the station, based on her background and experience?

David Miramontes: Yes. We have discussed that." (Tr. 2692).

154. Miramontes further testified that he would go to Richard Kale for guidance and assistance in performing his duties as General Manager (Tr. 2667).

155. David Miramontes is a Hispanic male. He has resided in San Diego since 1967 (Tr. 2566; Amigos Ex. 2; Amigos Ex. 3, p. 1).

156. Miramontes, since 1981, has operated EEO Consultants. This firm assists companies in the areas of equal employment opportunities and affirmative action. He is also the owner of an export-import company and, at the time of his testimony, was in the process of forming a new company to sell computers (Tr. 2564-65, 2670-2675; Amigos Ex. 3, p. 1).

157. From 1975 until 1981, Miramontes worked for the U.S. Department of Labor, Office of Federal Contract Compliance Programs, where he was an Equal Opportunity Specialist. His responsibilities included conducting compliance reviews of government contractors subject to Executive Order 11246, Section 503 of the Rehabilitation

Act of 1973 and Section 402 of the Vietnam Era Veterans Readjustment Act of 1974 (Amigos Ex. 3, p. 2). From 1970-1975, Miramontes was employed as the Director of Municipal Athletics for the City of San Diego. He planned, promoted, organized and administered city-wide men's and women's municipal athletics for the City of San Diego. As Director he was responsible for implementing comprehensive public and private athletic programs for the citizens of San Diego. He was also responsible for the City's athletic facilities and for budget recommendations to the City Manager (Amigos Ex. 3, p. 2)

158. Miramontes served with the United States Air Force as a Security and Intelligence Analyst from 1952-1956. He is married and has two daughters (Amigos Ex. 3, p. 3).

159. Miramontes has been involved in the following organizations:

San Diego Navy League, 1983-present

Board of Directors, San Diego State University Aztec Athletic Foundation, 1983-present

Panel of Arbitrators - American Arbitration Association, 1983-present

Personnel Management Association, 1982-present

The Hispanic - Jewish Coalition, 1984-present

Hispanic and Black Community Cooperation Association, 1984-present

Former Member San Diego Police Department - Community Relations Board, 1967-75

Sports Director - America's Finest City Program, 1970-75

Former Advisor to Senior Citizen Federal, 1970-74

Former San Ysidro Teen Club Sponsor and Advisor, 1970-74

Former Youth Employment Program Director, 1970-74

Former Chairman - San Ysidro Community Board, 1970-74

Former Member of Human Resources Development Board, 1970-74

Masonic Order, 1953-present

Former President - California Parks and Recreation Board, 1974

Former President - San Diego Youth Soccer Federation, 1973

Former President - Community Action Council, 1972

Former Equal Opportunity Commission Advisory Board, 1972-74

Former Mexican-American Cultural Coordinator - City of San Diego, 1973-74

Board of Directors and Vice-President Mexican-American Business & Professional Association, 1984-present.

(Amigos Ex. 3, p. 3).

160. Jan Horning is a non-minority female. She resides at Bainbridge Island, Washington, but will relocate to San Diego with her husband, Richard Kale, should they be successful in this proceeding (Amigos Ex. 2, Tr. 2874, 2912).

161. Ms. Horning is presently secretary/treasurer, a director and 50% owner of Kale Media Management. She is in charge of office administration, banking and investor relations for Kale Media Management. Her responsibilities have also included serving as director of research. In the past, Ms. Horning's programming research services have been sold to radio stations on a fee basis. In that regard, she has consulted and counseled CEO's, station general managers, program and news managers on the effectiveness of station programming. She has designed custom audience research and implemented analysis and interpretation of published market research data. Ms. Horning works from 20 to 50 hours per week at her position. It is not uncommon for her to work 50 hours per week. She normally spends some time at her work every day. Nowhere in her written or oral testimony does Ms. Horning state that, upon grant of Amigos' application, she will cease working at her current position at Kale Media Management (Tr. 2878; Amigos Ex. 4, p. 1).

162. Prior to formation of Media Management in 1981, Ms. Horning worked as an independent radio research consultant for several months in Los Angeles, California. From 1979 through December 1980, Ms. Horning was successively Senior Marketing Analyst, then Director of Research for Golden West Broadcasters' radio division, Los Angeles. Her responsibilities included ongoing analysis of programming for eight major market radio stations in Los Angeles, San Francisco, Detroit, Seattle and Portland ; training station personnel in consumer and marketing research; design, administration and implementation of customer audience research; and administration of the research department (Amigos Ex. 4, p. 1).

163. Prior to assuming her research role in Los Angeles, Ms. Horning was employed at Golden West stations KEX and KQFM, Portland, Oregon. From January 1978 to April 1979, she was executive assistant to the vice president/general manager of the stations. During part of that time, she worked for Richard Kale. Included in her responsibilities were administration and supervision of the general office staff, including hiring, training, performance evaluation and salary review of these personnel (Amigos Ex. 4, p. 2; Tr. 2876-2877).

164. At KEX and KQFM, Ms. Horning was also responsible for the FCC public files and for administration and implementation of the station's Equal Employment Opportunity Programs. She also supervised the station's minority intern broadcast training programs, working with university staff and high school career counselors to aid in the selection of ethnic minority and women students for election to the KEX/KQFM school accredited program (Amigos Ex. 4,

2).

165. During 1977, Ms. Horning was employed as a Customer Service Representative for the Portland Memorial Coliseum complex. Ms. Horning was responsible for lessee relations with facilities tenants and supervised a staff of operating personnel during Portland Trailblazers games and other athletic events, concerts, trade shows and mass audience events. *Id.*

166. From 1975 to 1977, Ms. Horning worked as Administrative Assistance to the founder and President of NIKE shoes. Her responsibilities also included management of NIKE's export department. Prior to her experience at NIKE, Ms. Horning was employed as an export clerk from 1973 to 1975 at Nissho-Iwai, one of Japan's largest international trading companies (Amigos Ex. 4, pp. 2-3).

167. Ms. Horning earned her bachelor's degree at Portland State University, Portland, Oregon. She also studied at Universitat Stuttgart, Germany and has attended post graduate classes in radio, marketing research and communications at UCLA in Los Angeles (Amigos Ex. 4, p. 3).

Diversification

168. Kale Media Management is a management firm which consults with broadcast stations on virtually all aspects of broadcast operation, including personnel, sales, programming and financial planning (Tr. 2877). Neither David Miramontes nor Jan Horning own or hold any interest in any broadcast station, cable television system, newspaper, or any other medium of mass communications. Kale Media Management does not own or hold any interest in any broadcast station, cable television system or newspaper or any other medium of mass communications. It does hold a 12 1/2% limited partnership interest in Reno Community Broadcasting Company, a Nevada Limited Partnership, applicant for a new television station at Reno, Nevada (Amigos Ex. 1).

Auxiliary Power

169. Amigos proposes to purchase and install emergency power generators to be used in the event of emergency conditions causing an interruption in normal power supply (Amigos Ex. 5).

REPRESENTATIVE MEDIA LIMITED PARTNERSHIP (RMLP)

Background

170. Representative Media Limited Partnership (RMLP) is a limited partnership formed under the laws of the State of California (RMLP Ex. 1, 15C). The RMLP Agreement of Limited Partnership was executed on November 15, 1984 (RMLP Ex. 15A). The partnership is composed of one general partner, Representative Media, Inc. (RMI), and one limited partner, Phillip Stumpff (RMLP Ex. 1, 15A). The general partner, RMI, hold a 30% general partnership interest in RMLP, is entitled to 30% of the partnership's profits, and is responsible for 30% of the partnership's losses (RMLP Ex. 1, 15A). Under the express terms of Sections 2.02 and 3.02 of the Agreement of Limited Partnership, RMI has the sole authority to control and manage the activities of RMLP (RMLP Ex. 15A, 15B). Phillip Stumpff holds a 70% limited partnership interest in RMLP, is entitled to 70% of the partnership's profits and is responsible for 70% of the partnership's losses (RMLP Ex. 1, 15A). Under the express terms of Section 3.02 of the Agreement of Limited Partnership, Stumpff has no authority to participate in the control or management of the business of RMLP (RMLP Ex. 15B). In addition, Stumpff will not be involved in the management or operation of the proposed Representative radio station. *Id.*

171. Representative Media, Inc., the general partner of RMLP, is a corporation organized under the laws of the State of California on July 27, 1984 (RMLP Ex. 1, 15E). The corporation has issued 1000 shares of voting stock and has three individual shareholders. RMI's officers, directors, and their respective voting stock interests are as follows:

Name	Official Position	Shares	Percent
Ms. Marta Concha	President, Treasurer, and Director	700	70%
Ms. Josie Lopez Carlson	Vice-President and Director	200	20%
Ms. Elida Chavez	Vice-President Secretary, and Director	100	10%

172. RMLP's proposed integrated principals, who are the shareholders of the RMLP general partner, RMI, each have a significant stake in the RMLP application and venture. Ms. Marta Concha paid35,000 for her 700 shares of RMI stock. Ms. Josie Lopez Carlson paid10,000 for her 200 shares of RMI stock, and Ms. Elida Chavez paid5000 for her 100 shares of RMI stock (Tr. 3502, 3568). The stock certificates were issued effective August 3, 1984 (Tr. 3098-99; Tr. 3503-04; Tr. 3208-09).

173. The RMI corporate checking account was opened on August 3, 1984 (AMG Ex. 7; Tr. 3042, 3090-91; Tr. 3502). At that time Ms. Concha and Ms. Silvia Leon were signatories (Tr. 3094). Ms. Leon, originally a shareholder and officer of RMI, resigned as Treasurer of RMI, and transferred her interest in RMI to Ms. Concha on or about October 28, 1984 (AMG Exs. 6, 10; Tr. 3094, 3198, 3234, 3237-38).[51] On November 1, 1984, Ms. Leon was deleted as a signatory on the RMI checking account (AMG Ex. 7; Tr. 3094).

174. In addition to their substantial monetary investment, each of the three controlling principals of RMLP was actively involved in the preparation and prosecution of the RMLP application (Tr. 2984; Tr. 3499). The RMLP principals explained that they decided to apply for Channel 251B both as an investment and as a means to further expand their commitments to community improvement (Tr. 3478, 3484, 3522; Tr. 3557, 3574). The shareholders of RMI knew each other prior to joining together to form RMI (Tr. 3006-07; Tr. 3482). Both prior and subsequent to filing the application, they met regularly, both formally and informally, to discuss the prosecution of the application and the business of the corporation and the partnership (Tr. 3007, 3198, 3206-07; Tr. 3491). All decisions concerning the prosecution of the application were discussed and made by all three shareholders. For example, all participated in the preparation of the application (Tr. 3011, 3026; Tr. 3487; Tr. 3561) and in discussions prior to their decisions to incorporate (Tr. 3031-32; Tr. 3488); as to the percentage ownership of RMI that each could afford (Tr. 3023- 24, 3030, 3042; Tr. 3485, 3490); to review the engineering plans to determine if the signal might be able to reach some of the underserved Indian reservations (Tr. 3489); to propose Spanish-language programming and to review the community's needs and submit an extensive

programming and ascertainment study to the FCC (Tr. 2984-85, 2988, 3287; Tr. 3517-18; Tr. 3561); to elect corporate officers (Tr. 3027-28, 3040; Tr. 3488, 3492-94; Tr. 3562); to reapportion their respective voting interests in RMI (Tr. 3042, 3096; Tr. 3495); to retain FCC and corporate counsel (Tr. 3016-21, 3025-27, 3031, 3033- 38, 3136; Tr. 3493-94, 3536); to terminate their original corporate counsel (Tr. 3102-03; Tr. 3504); as to what role each would have at their proposed station based upon their personal background and experiences (Tr. 3497; 3533); and to form a limited partnership (Tr. 3209-10; Tr. 3536).

175. The principals of RMI first met with Phillip Stumpff on August 16, 1984, to discuss the possibility of his participation as an investor in their project through a limited partnership structure (Tr. 3210, 3218). At the first meeting, it was discussed and understood that RMI would continue to be in complete control, and that Stumpff would be strictly a passive investor in the project (Tr. 3225). Extensive negotiations ensued between the shareholders of RMI, Stumpff, their respective advisors, and FCC counsel (Tr. 3224-30; Tr. 3536). Stumpff was represented in the negotiations by his accountant and business advisor, Mr. Webb (Tr. 3229). RMI was represented in the negotiations by their accountant, Mr. London (Tr. 3228, 3230-31). The limited partnership agreement went through at least three drafts before the parties each found it acceptable and in accordance with their discussions (Tr. 3229, 3262-63).

176. Budgets were prepared both for pre-grant expenses and for construction and one year's operation (Tr. 3225-26). The Limited Partnership Agreement reflects the negotiated budget contributions of the general and limited partners. The general partner is contributing 25% and the limited partner 75% of the budgeted prosecution, construction, and initial operation costs (RMLP Ex. 15A, Section 4.01, 4.02, 4.03; Tr. 3227). The 5% difference between the financial contribution percentage and the equity ownership percentage of the respective parties was a matter initially raised by Ms. Lopez Carlson, and subsequently agreed to by Stumpff, as a means of compensating RMI for the work required of it to put the proposed station on the air (Tr. 3218-19, 3224).

177. The Limited Partnership Agreement also contains a provision whereby RMI, three years after the FCC issues RMLP program test authority, and every second year thereafter, has the right to purchase from Stumpff, his entire 70% limited partnership interest in RMLP (RMLP Ex. 15A). Further, if eight years after program test authority has been issued to RMLP, it has not exercised its call, Stumpff has the right to sell his entire limited partnership interest to RMI (RMLP Ex. 15B).[52] If RMI does not purchase the entire 70% limited partnership interest, only then does Stumpff have a right to purchase RMI's 30% general partnership interest in RMLP (RMLP Ex. 15B). Marta Concha, the controlling shareholder of RMI testified that RMI definitely intends to exercise its "call" rights under the Limited Partnership Agreement (Tr. 3254). In fact, she stated they wished they could buy out Stumpff in less than three years. *Id.* Further, Stumpff is not interested in purchasing RMI's general partnership interest should RMI fail to exercise its rights after eight years (Tr. 3257). Rather, he anticipates RMI will buy him out so that he can recoup his investment as soon as possible (Tr. 3257).

178. Once the RMLP Limited Partnership Agreement was executed, the principals conducted themselves in accord with its terms governing management and control of the partnership. While the shareholders of the general partner have met and communicated on a regular basis, Stumpff has not met with the shareholders of RMI to consider partnership business, except as specifically provided for in the agreement with respect to the yearly audit (RMLP Ex. 15A, Section 2.06; Tr. 3246-49, 3251).

Integration

179. RMLP proposes to integrate into the management of the radio station its shareholders holding 100% of the stock of RMLP's sole general partner, RMI (RMLP Ex. 3). These individuals are Marta Concha, Josie Lopez Carlson, and Elida Chavez (RMLP Exs. 3, 4, 5, 6).

180. Ms. Concha, who exercises 70% voting control of RMI, and hence of the applicant itself, will serve on a full-time basis as General Manager of the station, devoting at least 40 hours per week to this position (RMLP Ex. 3, 4). As General Manager, Ms. Concha will oversee the activities of all station departments, including production, engineering, labor, purchasing, and sales, will determine major station policies, and will supervise the day-to-day operation of the entire station (*Id* ; Tr. 3174).

181. Ms. Concha is an Hispanic female and a citizen of the United States (RMLP Ex. 4). She was born and raised in La Plata, Argentina. *Id.* Her parents were also born in Argentina. *Id.* Spanish was spoken in her parents' home as she grew up. *Id.* She received her primary education and first learned English at Marie Auxiliadora Catholic School, and received her secondary education at the Colegio de Eucaristia, both in La Plata, Argentina. *Id.* Ms Concha lived in Argentina until 1957, when she moved to San Francisco, California *Id.* She became a United States citizen in 1966. *Id.*

182. Ms. Concha has resided in La Jolla, California since 1977. *Id.* Each of her La Jolla residences are within the 70 dbu coverage contour of RMLP's proposed radio station (*Id.* ; Tr. 2974).

183. Ms. Concha has been employed in the broadcast field since 1977. *Id.* Since 1978, she has been employed at KPBS-FM, San Diego, California, as the Herispheric News Editor of "Enfoque Nacional," a weekly Spanish language new magazine produced for National Public Radio at KPBS-FM (*Id.* ; Tr. 3181; 3270). As the Hemispheric News Editor, she produces and announces the news portion of that program (*Id.* ; Tr. 3264-65).

184. Ms. Concha was also a volunteer community producer and announcer of three weekly radio programs, "Usted y Su Salud," "Informacion para el Consumidor," and "Momento Literario," aired on KPBS-FM's bilingual program "Contacto 89." (RMLP Ex. 4; Tr. 3181). Ms. Concha began producing "Usted y Su Salud" (You and Your Health) on a volunteer basis in 1977, as a short (approximately 10 minute) health information segment presented by her in Spanish (RMLP Ex. 4; RMLP Ex. 18; Tr. 3161-62, 3164). In 1983 she expanded the format of "Usted y Su Salud" to a one hour live interview program format (Tr. 3161-62). She continued to produce and host this program in this expanded format until the Spring of 1985 (Tr. 3164-65; AMG Ex. 27; RMLP Ex. 4). In 1981, Ms. Concha also began producing two additional Spanish-language programs as a volunteer community producer at Station KPBS(FM) -- "Momento Literario" (Moment in

Literature) and Informacion para el Consumidor (Consumer Information) (AMG Exs. 22A, 23, 24; Tr. 3166, 3171-72, 3265-67). To the best of Ms. Concha's information and belief, she continued to produce and host new segments of these two programs through the Spring of 1984 and the Spring of 1983 respectively (AMG Ex. 22A).

185. In 1984, Ms. Concha hosted a program featuring representatives of coalitions supportive of and opposed to the Simpson-Mazzoli Immigration Reform Bill, then-pending legislation before the Congress of the United States (RMLP Ex. 4). That program was aired by the community cable television station on Channel 3, in Los Angeles. *Id.* In 1982, Ms. Concha taped a series of interviews with Myrna Zambrano, Director of the Rape Crisis Center, operating through the Women's Studies and Services Program. *Id.* She also taped commercials for the Center. *Id.* These interviews and commercials were broadcast on noncommercial station KPBS(FM), San Diego, California, and on commercial radio stations in San Diego. *Id.* From 1979 to 1982, she hosted part of "Buenos Dias Frontera," a local Spanish news program broadcast daily on "Contacto 89" at KPBS(FM), San Diego. *Id.* In 1982, she hosted a segmented of "Panama Canal," a program produced at KPBS(FM) in San Diego for the National Public Radio in Washington, D.C. *Id.*

186. Ms. Concha timely promised to resign her employment and terminate her position as a Community Producer and Independent Reporter at KPBS(FM) in order to work full time as General Manager of Representative's station if RMLP's application is granted, and to not engage in any other employment while working at the RMLP station. *Id.*

187. Ms. Concha has also been involved in community and civic organizations in San Diego. She began her community involvement in 1977 when she first moved to San Diego, at which time she began working as a volunteer community producer at KPBS(FM), and has remained active (Tr. 3176, 3179, 3181). She has been an active member of the Mexican and American Foundation since January or February of 1984 (RMLP Ex. 4; Tr. 3176-77). In May, 1985, she became a member of the Board of Trustees of the Mexican and American Foundation based in San Diego (*Id.*; Tr. 2975). She was Chairwoman of the 1985 Miss Hispanic California Leadership Pageant, and also produced the 1985 Coronation Ball, in San Diego (*Id.*; Tr. 3179). Ms. Concha has also since 1978 been a member of the Producers Club, an organization which raises funds, and stages community events for the benefit of noncommercial radio station KPBS(FM) in San Diego (*Id.* ; Tr. 3180).

188. Ms. Josie Lopez Carlson, who exercises 20% voting control of RMI, and hence of the applicant itself, will serve as Business Manager of the proposed RMLP station, devoting at least 40 hours per week to this position (RMLP Ex. 3, 6). As Business Manager, Ms. Lopez Carlson will have management responsibility for all business activities of the station, including the development and implementation of billing, accounting, purchasing, station maintenance, and personnel policies (*Id.* ; 3534-35). She will also review, negotiate and maintain contracts, will be responsible for EEO recommendations, and will be responsible for overseeing the maintenance of station equipment and inventory (Tr. 3175-76; Tr. 3535, 3541).

189. Ms. Lopez Carlson is an Hispanic female and a citizen of the United States (RMLP Ex. 6). She was born in Jamay, Jalisco, Mexico in 1950. *Id.* Her mother was born in Mexico and her father was born in the United States. *Id.* Her parents moved to the United States in 1954. *Id.* Both her maternal and paternal grandparents were born and raised in Mexico. *Id.* Spanish and English were spoken in her parent's home as she grew up. *Id.* Spanish and English are spoken in her home at present. *Id.*

190. Ms. Lopez Carlson has resided in the San Diego area for approximately 25 years. She lived within the 70 dbu coverage contour of RMLP's proposed station between 1954 and September 1972, between September 1974 and May 1976, and from July 1980 to the present. *Id.*

191. During the 1971-72 and 1974-76 school years, Ms. Lopez Carlson attended Grossmont College in San Diego (RMLP Ex. 6). She attended Indiana University in Bloomington, Indiana during the 1973-74 school year, where she studied Business Administration -- Personnel and Labor Relations. *Id.* During the 1977-78 school year, she attended Baldwin Wallace College in Berea, Ohio where she studied Personnel and Labor Relations. *Id.*

192. Between February 1982 and October 1985, Ms. Lopez Carlson was the Director of Human Resources and Community Relations at Hartson Ambulance Services in San Diego. *Id.* In that position, she had responsibility in all phases of creating and carrying out company policies and procedures; she participated in the full range of labor and personnel matters; and she served as company liaison to various government, private, and community organizations. *Id.* Between November 1981 and December 1982, Ms. Lopez Carlson managed the Designer Salon of Robinson's in San Diego. In addition to being responsible for day-to-day store operations, and handling management functions, Ms. Lopez Carlson was responsible for merchandising, preparing press releases, weekly and monthly report, maintaining monthly journals, coordinating fashion trunk shows and serving as the company's Spanish translator.

193. Between August and December of 1980, Ms. Lopez Carlson was the Coordinator of the Affirmative Action Program For CUBIC Corporation in San Diego. *Id.* In that position she participated in all phases of ensuring that departments of the company complied with their affirmative action program obligations. *Id.* Between August 1978 and August 1980, Ms. Lopez Carlson was a Personnel Manager of the Ceilcote Company in Berea, Ohio. *Id.* As Personnel Manager, Ms. Lopez Carlson had overall responsibility for administration of a union shop wage and salary program; developed programs concerning productivity, absenteeism, and training and safety; coordinated EEO and affirmative action programs, and served as a company liaison for recruiting purposes.

194. Between June 1976 and August 1978, Ms. Lopez Carlson was a Personnel Assistant at May Company in Northolmstead, Ohio, where she had responsibility for recruitment and placement; setting up training and safety programs, employee suggestion, and employee benefit programs; wrote an Employee Handbook and job descriptions, and developed a performance evaluation system; maintained OSHA and EEO/AAP records; prepared work schedules for sales associates; and participated in grievance procedures. *Id.* Between September 1974 and December 1975, she was a Fashion Consultant and Designer for Innovations in San Diego. Between April 1970 and August

1972, she was the Personnel Assistant to the Deputy Director of the Economic Opportunity Commission in San Diego. *Id.* Ms. Lopez Carlson also has specific experience preparing and implementing accounting systems, budgets, and health care plans, along with a background in bookkeeping, payroll, balancing books, and budget accountability (Tr. 3534-35).

195. Ms. Lopez Carlson has also been involved in community and civic organizations in San Diego (RMLP Ex. 6). She has been an active member of the Mexican and American Foundation in San Diego since May 1983. *Id.* She has served on the Foundation's Executive Board of Directors since October 1983. *Id.* She served as Secretary of the Board of Directors in 1984. *Id.* Since January 1985 she has been the Community Affairs Officer of the Board of Directors. *Id.* In 1984, she was Chairwoman of the VIP Committee and Co- Producer of "An Evening With the Stars -- 1985." *Id.* In 1985, she was the Executive Producer of "An Evening With The Stars -- 1986." *Id.* In November, 1984, she received the "Dama de Distincion" award. *Id.*

196. Ms. Lopez Carlson is also a volunteer Board Member of the Educational Cultural Complex of San Diego Community College, which is the only minority college in San Diego (*Id.* ; Tr. 3524-25). Since April 1983 she has served as the Public Relations Office of the Executive Board of PMA of Aztlan, a minority professional human resources organization (RMLP Ex. 6; Tr. 3525- 27). This position is a voluntary community activity, not tied to her professional employment (Tr. 3525-27). In February, 1982, she was a founder of the Professinal Latin American Women's Network, and she has been an active member since (RMLP Ex. 6). In January 1984, she became a member of the Affirmative Action Council in San Diego. *Id.* In October 1984, she was a guest speaker before the city of San Diego Mayor's Hispanic Advisory Committee. *Id.* Also in October 1984, she was appointed to serve on the Executive Black-Latino Dialogue Committee in San Diego. *Id.* Since January 1985, she has been President of the Educational Subcommittee of the Binational Emergency Medical Committee. *Id.* Between January and August 1985, she served as Co-Coordinator of Public Relations for the August 1985 International Congress of Search and Rescue Conference, held in Tijuana, Mexico. (Tijuana is within the proposed 1 mV/m contour of RMLP's station). *Id.* Both of these positions were voluntary community involvements, not tied to her professional employment at the ambulance company (Tr. 3527-28). In May 1985, Ms. Lopez Carlson was the recipient of a Certificate of Leadership and Scholarship for National University in San Diego (RMLP Ex. 6). She has also served on the Membership Committee of The Group, a professional labor relations management organization based in San Diego, since March 1983 (*Id.* Tr. 3529).

197. Since 1983, she has been involved with Las Commadres, a Latin women's organization which provides community assistance; with Barrio Station, an Hispanic organization which provides assistance, training and counseling to youth; and with AHEC, a federally funded program established to promote minorities in health related fields. *Id.* Each of these involvements were volunteer, civic involvements based in San Diego (Tr. 3530). Since 1984, she has been involved with the Minority Business Suppliers Development Council, as an ongoing supporter and participant; with the Urban League, through assisting with fund raisers, dinners, advertisements, along with personnal financial contributions; and as a volunteer with the Occupational Training Services, which provides employment training, counseling, and placement (*Id.* ; Tr. 3531- 33). In 1985, she became involved as an active supporter of the Asian Pacific American Chamber of Commerce in San Diego, by helping the organization with their leadership, assisting organizing a conference, and with fundraising (RMLP Ex. 6; Tr. 3532-33).

198. Ms. Lopez Carlson also has been a volunteer fundraiser for the local Muscular Dystrophy Association since June 1983, has served in six United Way campaigns since 1976, and was a volunteer for local chapters of the American Lung Association from 1969-72 and 1974-76, and of the American Cancer Society in 1975 (RMLP Ex. 6). In addition to her volunteer fundraising activities for the United Way, she served as Campaign Chairwoman of the United Way in San Diego, California. *Id.*

199. Ms. Elida Chavez holds 10% voting control of RMI and hence of the applicant itself. She will serve on a full-time basis as Sales Manager of the station, devoting at least 40 hours per week to this position (RMLP Ex. 3, 5). As Sales Manager, Ms. Chavez will have management responsibility for all commercial sales accounts, both local and national, and for supervision of the sales staff and support personnel (RMLP Ex. 3, 5).

200. Ms. Chavez is an Hispanic female and a citizen of the United States (RMLP Ex. 5). Ms. Chavez was born in Sonora, Texas in 1948. *Id.* Her mother and father are of Mexican descent. *Id.* Her mother's father and father's father were both born in Mexico. *Id.* Spanish and English were spoken in her parents' home as she grew up. *Id.*

201. Ms. Chavez has resided in the San Diego area for over 20 years -- since 1964 (RMLP Ex. 5). Each residence was located within the 70 dbu coverage contour of RMLP's proposed radio station, except for her residence from 1967 to 1979, which was located within the 1 mV/m coverage contour of RMLP's proposed station (*Id.* ; Tr. 3546).

202. Ms. Chavez received a Bachelor of Business Administration in Marketing in January 1982 from National University in San Diego. *Id.* She is pursuing an MBA in Marketing at National University, which she expects to complete by 1987. *Id.*

203. Since 1984, Ms. Chavez has owned and operated Chavez and Associates, an international marketing, and business consulting firm which directs its services to the multi-ethnic markets in advertising, marketing, and business consulting, with a major emphasis on Spanish language markets. *Id.* Ms. Chavez has promised to completely remove herself from her business if the RMLP application is granted (Tr. 3550-52).

204. Between 1982 and 1984, Ms. Chavez was employed as a Marketing Specialist at San Diego State University Foundation/Business Development Center. *Id.* In that position she created a system of identifying and sharing procurement and contract opportunities, resulting in the matching of firms with clients, and she developed business relationships between ethnic and minority business ventures and multi-national franchising operations. *Id.*

205. Between 1981 and 1982 Ms. Chavez was employed as an International Media Consultant and Sales Representative for Estrada and Associates in San Diego. *Id.* In that position she contacted prospective clients in Mexico and the United States regarding the purchase of media

advertising time, and she coordinated a sales crew in the areas of marketing, advertising, and publicity in international markets. *Id.*

206. Between 1978 and 1981 Ms. Chavez was employed as a Promotions/Sales representative for Century Jewelry Wholesale. *Id.* In that position, she was primarily involved in public relations for the company. *Id.* Between 1972 and 1978 she was an Administrative Assistant to the Director of the Interracial Council for Business Opportunity of the National Economic Management Association in San Diego. *Id.* In that position she interviewed and assisted clients in completing forms and SBA loan applications, maintained reports to pertinent agencies on an annual, quarterly, or monthly basis, was responsible for bank and client loan interviews, for public relations, and for communications with contractors and the community, and supervised a staff of sixteen VISTA volunteers. *Id.*

207. Ms. Chavez has been involved in community and civic organizations in San Diego. *Id.* She has been an active member of the following San Diego organizations for the years indicated: Mexican and American Foundation, 1971 - present; Chicano Park Steering Committee, 1971 - 1983; and Secretary of the Public Relations Committee of the Hypertension Council from 1983-1984 (RMLP Ex. 5). She was a Guest Speaker at the Rotary Club of Southeast San Diego in 1983, where she spoke on minority business development in San Diego. *Id.* She participated in the California Business Education Association's International Trades Program in the San Diego City schools in June, 1985. *Id.* Ms. Chavez has also been a dues paying member of the following organizations for the years indicated: Latin United League of American Citizens, 1963 - present; American GI Forum, 1963 - present; Mexican American Political Association, 1982 - present; Chicano News Media Association, 1982 - present (RMLP Ex. 5; Tr. 3577-78).

208. Ms. Chavez was appointed to the City of San Diego Commissioner's Small Business Advisory Board in 1985. *Id.* She is one of nine voting members on this Board and is the first Hispanic female appointed to this Board. *Id.* She chairs the Public Relations Committee for the Board. *Id.* In addition, she recently accepted an invitation to join the Mexican American Business and Professional Association. *Id.*

Diversification

209. Neither RMLP nor its general partner, RMI, hold any ownership interest in any licensee or permittee of any television or radio station, in any cable system, in any daily newspaper, or in any other medium of mass communications, with the exception of their interests in the RMLP application itself (RMLP Ex. 2).

210. Marta Concha, the President of RMI, the general partner of RMLP, has a 2% ownership interest in the outstanding common stock of Quetzal Bilingual Communications, Inc. (Quetzal), the permittee of as yet unbuilt Station KIRS(AM) (formerly KSDG(AM)), San Diego, California[53] (RMLP Ex. 2; *Order*, FCC 86M-689, released February 25, 1986). Ms. Concha acquired a 1% interest in May of 1985, and an additional 1% interest on January 15, 1986 (*Id.* ; Tr. 3004, 3192). Ms. Concha has no other interest in KIRS(AM) and is not an officer or member of the Board of Directors of the permittee corporation (RMLP Ex. 2; *Order*, FCC 86M-689, released February 25, 1986). Ms. Concha has timely promised that if the RMLP application is granted, she will divest herself of all her interest in Quetzal and Station KIRS(AM). *Id.* Ms. Concha has no other ownership or management interest in any other medium of mass communications (RMLP Ex. 2).

211. Phillip Stumpff, the limited partner of RMLP, holds an 18% limited partnership interest in Channel Ten Limited Partnership, which in turn owns approximately 79% of the outstanding stock of Eastern Oklahoma Television Company, Inc., the licensee of television Station KTEN(TV), Ada, Oklahoma (RMLP Ex. 2). Stumpff was a member of the Board of Directors of Eastern Oklahoma Television Company, Inc., from April 22, 1985 until November 1, 1985 (*Id.* ; AMG Ex. 12). Stumpff timely promised to resign from his position as a member of the Board of Directors of Eastern Oklahoma Television Company, Inc., if the RMLP application were granted (RMLP Ex. 2). Stumpff has timely promised to divest himself of all of his interest in Channel Ten Limited Partnership, and sever all connections with Eastern Oklahoma Television Company, Inc., if RMLP's application is granted. *Id.* Stumpff holds no other interest in any other medium of mass communications. *Id.*

212. No other individual stockholder or partner of RMI or RMLP has any present ownership in any other broadcast station or other medium of mass communication. *Id.*

Auxiliary Power

213. RMLP proposes to install auxiliary power equipment to assure maintenance of broadcast operations during power failures (RMLP Ex. 7).

TRIPLE BOGEY BROADCASTING (TBB)

Background

214. Triple Bogey Broadcasting (TBB) is a limited partnership formed under the laws of the State of California (TBB Ex. 11). The Triple Bogey Broadcasting Limited Partnership Agreement (TBB Partnership Agreement) was executed on October 22, 1984 (TBB Ex. 8). The partnership is composed of one general partner, Kamony Broadcasting, Inc. (Kamony) and three limited partners, John G. Davies, Christopher D. Sickels and Frank D. Alessio (TBB Ex. 1). The general partner, Kamony, holds a 25% ownership equity interest in TBB, is entitled to 25% of the partnership's distributions of profits, and is responsible for 25% of any of the partnership's net losses (TBB Ex. 8 at Section 2.07). The three limited partners each hold a 25% equity interest in Triple Bogey, are each entitled to 25% of the partnership's profits, and are each responsible for 25% of the net losses. *Id.*

215. Kamony, the general partner of TBB is a corporation formed under the laws of the State of California in October, 1984 (TBB Ex. 9, 10). The corporation's three individual shareholders are Bruce E. Walton, Marie C. Widman and Rosa Elizabeth (Gonzalez) Phipps (TBB Ex. 1). Kamony's officers, directors, and their voting stock interests are as follows (*Id.*):

Name	Official Position	Shares	Percent
Bruce E. Walton	President, Director	52	52
Marie C. Widman	Vice President, Director	24	24
Rosa Elizabeth (Gonzalez) Phipps	Secretary/ Treasurer Director	24	24

216. Bruce Walton learned about the Channel 251B proceeding as a result of his position as the general manager of Station KIFM, a role that he has filled since 1981 (Tr. 3586-3587). He filed as an individual applicant in July 1984 (Tr. 3587-3588). Notwithstanding the fact that Walton filed as an individual, the application as originally tendered named those persons who were expected to become TBB limited partners, *i. e.*, Alessio, Davies, and Sickels (Tr. 3588). Walton testified that at the time the application was filed he also had a good idea that Widman and Phipps would become principals. Since he knew there would be a "B" cut-off date, he saw no extreme pressure to file a completed application. Walton noted that he had not completely decided upon the composition of the general partner at that time (Tr. 3588-3590).

217. Walton met with Alessio and Davies in early July 1984 to discuss their participation in the application. Walton related that in return for their limited partnership interests, they would have to give him total control and a loan commitment (Tr. 3595). The application was filed July 27, 1984 at a time when no limited partnership agreement was yet in existence (Tr. 3596). Although specific rights and obligations under the proposed limited partnership agreement had not been defined at the time of the original filing, Walton had discussed with the potential limited partners their financial commitments, and they had indicated their willingness to comply (Tr. 3599).

218. The TBB limited partnership agreement was not executed until October of 1984 (Tr. 3608-3609). The limited partners desired Walton to be the controlling general partner because they knew and trusted him (Tr. 3610). Since both Widman and Phipps were to be managers at the station, were to work full-time at the facility, and would have financial interests in the station, they were both provided with 24 percent of the stock of the general partner (Tr. 3611).

219. Section 2.02(b) of TBB's limited partnership agreement (TBB Ex. 8) refers to an initial cash contribution aggregating 25,000. Walton testified that this had been the only cash contribution to date, and that it had been met proportionately by the general partner as well as by three limited partners (Tr. 3622). The6,250 that represented the initial cash contribution of the general partner, Kamony, was further paid in proportion of the stock interests of the three Kamony principals (Tr. 3622-3623).

220. Section 2.04 of the partnership agreement also addresses the contingency of a failure to pay capital contributions. Walton testified that if a general partner failed to provide his proportionate amount of a capital call, he would forfeit that percentage of his partnership interest based upon the amount of the capital call at issue. The contributing limited partners, to the extent they assumed the non-contributing partners' commitment, would have their interests increased accordingly (Tr. 3625-3626). Walton testified that he would not call for a capital contribution from the general partners unless he knew beforehand that they could satisfy the particular capital call (Tr. 3626). Walton further asserted that the composition of the general partner could not change. However, he was unable to point to any provision in the agreement which specified that the composition of the general partner was immutable (Tr. 3627). This was confirmed on the record by TBB's counsel (Tr. 3629).

221. Section 2.06 of the partnership agreement states that the limited partners agree to lend the partnership up to a maximum aggregate amount of250,000. Walton testified that there were no provisions in the agreement whereby the limited partners were required to loan funds in excess of250,000, but that the partnership could rely upon capital calls in excess of the loan provision (Tr. 3636).

222. Walton did not know whether or not there was a right to ask for cash contributions from the individual stockholders of the general partner, (Tr. 3639). However, TBB Exhibit 13 consists of a Shareholders Agreement, and Recital C, therein, requires the other shareholders to make pro-rata contributions (Tr. 3640-3641). Walton testified that to his knowledge there was no other agreement covering a default by any of the stockholders in the event they did not provide their pro-rata shares. He acknowledged that if the Kamony stockholders refused to pay their proportional shares, the only remedy would be through a court (Tr. 3641-3642).

223. Section 7.01 of the partnership agreement allows a limited partner to purchase the stock interest of the general partner. Under the right of first refusal included within that article, if the general partner desires to sell its 25 percent share in the partnership, the limited partners would have a right to purchase that interest (Tr. 3667).

Integration

224. If TBB's application is granted, Walton will become the full- time general manager of the facility, devoting a minimum of 40 hours per week to that activity. He will oversee all aspects of station operations including, but not limited to, sales, programming, staffing and community relations. He will also exercise these responsibilities in coordination with the other officials of the station on matters within their respective purviews (TBB Ex. 5, p. 2).

225. Walton, who is Kamony's president, was born in San Diego. With the exception of time spent at college and during a professional football career, he has always resided within the primary service area of the proposed station (TBB Ex. 5, pp. 1-2). Walton presently resides at Encinitas, California (Tr. 3585).

226. Walton has been employed continuously in the radio broadcast business for the past ten years (TBB Ex. 5). From 1976-1978, Walton was employed at Station KCBQ in San Diego as an Account Executive, and from 1978 to December 1981, Walton was employed by KCBQ as Local Sales Manager (*Id.*).

227. In December 1981, Walton became the general manager of Station KIFM at San Diego, and he presently serves in that capacity. From December 1981 to September 1, 1985, he performed his services as an employee of West Coast Media, the licensee of KIFM. On September 1, 1985, he became vice president/general manager of a newly formed corporation, Unidyne Broadcasting, Inc.

(Unidyne), which provided Walton's management services to KIFM and also to Station XHITZ at Tijuana, Mexico, on a contractual basis. Since November 1, 1985, Walton has been employed as an independent consultant by Unidyne and in this capacity continues to serve as general manager of KIFM and XHITZ (TBB Ex. 5, pp. 1-2). Walton testified that he would discontinue all services to Unidyne, KIFM and XHITZ upon grant of the TBB application (TBB Ex. 5, p. 2).

228. Walton is the sole stockholder of Bruce Walton Corporation, and it is through that entity that he provides consultant services to Unidyne (Tr. 3676). He has no ownership interest in Unidyne, is not a director, but is a vice president (Tr. 3677). Walton entered into an employment contract with Unidyne in September 1985. The employment contract is a self-renewing, year- to-year contract which can be terminated at Walton's option within 30 days, and 60 days at Unidyne's option (Tr. 3678, 3680).

229. Walton has served on the Board of Directors of the Holiday Bowl since 1982 (TBB Ex. 5). He spends about 100 hours a year on this activity (Tr. 3694). In addition, Walton became a member of the Board of Directors of the San Diego Symphony Orchestra in May of 1985 and is Chairperson of the Special Events Committee of the San Diego Symphony Orchestra (Tr. 3694; TBB Ex. 5).

230. Marie Widman will work at the station at least 40 hours each week as its News Director. As News Director, Ms. Widman will formulate and implement the station's overall news policies. She will manage the station's news gathering and reporting efforts, hire and supervise news personnel and have day-to-day responsibility for all news programming. Ms. Widman will also consult with and assist the Director of Programming on the formulation of public affairs programming policies (TBB Ex. 6, p. 3).

231. Ms. Widman, a Black female, was born on July 8, 1931 and raised in the City of San Diego. She was educated in city schools and is a graduate of San Diego State College with a degree in Sociology and Theatre Arts. She has resided in the City of San Diego her whole life (TBB Ex. 2, 6). Ms. Widman is not presently employed and last had a job in 1952. Since that time she has been a housewife (Tr. 3738-3739).

232. Ms. Widman has a 23 year record of civic activities in the City of San Diego (TBB Ex. 6). She first became active in community affairs during the civil rights movement, serving as Secretary of the San Diego Branch of the NAACP for seven years from 1959 to 1966. Her involvement in civil rights led to her subsequent appointment to various local governmental bodies. She was appointed to the Board of Library Commissioners for the City of San Diego in 1963 and served on this Board until 1971. In 1971, she was appointed to the San Diego Park and Recreation Board and served on this Board until 1976. She served on the Metropolitan Transit Development Board Citizen's Advisory Committee which was active in 1975. In 1976 she was appointed to the San Diego City Planning Commission. She retired in 1985 after serving two terms on the Commission (a third term is not permitted). As a City Planning Commissioner, Ms. Widman has been involved, in a decision-making role, in all aspects of the City's growth. *Id.*

233. Among Ms. Widman's activities with charitable and social service organizations in San Diego are the following: Board of Directors of United Way of San Diego, 1973-1981; Board Member of Boys and Girls Aid Society, 1972-1979 (President 1976-1978), Board of Directors of Travelers' Aid Society from 1958-1972, and President of the Society from 1966-1969; and Board member of YWCA of San Diego 1961-1967 (TBB Ex. 6). Ms. Widman has been a member of the Board of the Armed Forces YMCA of San Diego County and a member of its Public Relations Committee since November 1984 and has been on the Board of Directors of the United Cerebral Palsy Association, San Diego Chapter, since 1978. *Id.*

234. Currently, Ms. Widman is serving as a member of: the San Diego Crime Commission since January 1984; the Public Sector Committee of the United Way of San Diego County; the Mayor's Commission on Crime; and the KPBS Advisory Committee (TBB Ex. 6). Ms. Widman has been a Commissioner of the Community Advisory Commission of the San Diego Energy Recovery Project since 1980. In this position she serves as a link between the community and the government in regard to establishment of a resource recovery plant (Tr. 3733). Ms. Widman is also a member of the San Diego Convention and Visitors Bureau (TBB Ex. 6).

235. She has also been involved in the oversight of court-ordered integration in San Diego since 1966 when she was a member of the Citizen's Committee to Study Equal Educational Opportunities in the San Diego Unified School District. She was also a member of the court appointed Integration Task Force for city schools from 1981 to 1984 (TBB Ex. 6). She served as a board member of the Board of Overseers of the University of California at San Diego. *Id.* at p. 4. She was President of the San Diego City College Foundation for Grants and Scholarships from 1982-1985 and Chairperson of the Citizens Council of San Diego City College from 1976-1979. She was Chairperson of the Community Education Committee of the Urban League from 1973-1980.

236. Rosa E. Phipps is proposed as the full-time Director of Programming at the station. Ms. Phipps will formulate the general programming policies and schedules for both the entertainment and non-entertainment programming, in coordination with the station's General Manager and News Director. She will also be in charge of the day-to-day scheduling of personnel. She will hire and supervise station announcers and other programming personnel (other than news personnel), and will hire and supervise other operating personnel. She will also deal with all outside program suppliers (TBB Ex. 7, p. 2).

237. Ms. Phipps, a Hispanic female, was born November 24, 1957 in Mexico and moved with her family to San Diego in 1963, residing in the San Diego area ever since that time (TBB Ex. 7, p. 1). Ms. Phipps has lived in La Mesa since 1980 (Tr. 3771).

238. From 1980 to 1983, she worked as a Secretary for the Departments of Sales, Traffic and Programming at Station KCBQ, San Diego. Her duties included logging and scheduling of commercials. From February 1983 to August 1984, Ms. Phipps worked at Station KSON AM/FM, San Diego, as Secretary to a staff of ten sales people and two sales managers. Her responsibilities included processing and keeping reports on local and national sales. From September 1984 to June of 1985, Ms. Phipps worked at Station KLZZ AM/FM, San Diego as Sales Assistant and Secretary to a staff of sales people and to the local sales manager. She was also Personal Secretary to the Station Manager (TBB Ex. 7). In July of 1985, Ms. Phipps became Program Assistant and Secretary to the

Program Director and Research Director at KSON radio in San Diego. Ms. Phipps will resign her current position if TBB's application is granted (*Id.*).

Diversification

239. Neither TBB nor any of its principals have any media interests (TBB Ex. 3).[54]

Auxiliary Power

240. TBB will install auxiliary power generating equipment to ensure the continuation of broadcast service in the event normal power sources fail (TBB Ex. 4).

NEW SOUNDS OF SAN DIEGO, INC. (NEW SOUNDS)

Background

241. New Sounds of San Diego, Inc. (New Sounds), is a California Corporation (New Sounds Ex. 1). Articles of Incorporation were filed with the Secretary of State of the State of California (New Sounds Ex. 9).

242. Ten shares of voting stock have been issued to each of the five principals, Alice Marquis, Celia Ballesteros, Lucy Goldman, Gloria Perez Samson and Elizabeth Yuko Yamada. No other stock has been issued. Each principal owns a twenty percent voting and equitable interest in the applicant (New Sounds Ex. 14).

243. Each principal has made equal capital contributions to the corporation. Stock was issued to the five principals in equal shares (ten shares each) at the October 24, 1984 meeting, as duly recorded in the minutes of the meeting signed by all five parties (New Sounds Ex. 13). Each principal paid for the stock prior to the November 15, 1984 "B" cut-off date. Each principal has made subsequent pro-rata contributions of money or, in the case of one principal, services in lieu of money. All five parties have signed a bank letter of commitment to New Sounds for475,000 secured by their personal financial assets.

244. The directors, officers and shareholders of the corporation are comprised of the five principals as follows:

Name	Position(s)	Percent Ownership
Alice G. Marquis	President & Director	20%
Celia I. Ballesteros	Secretary & Director	20%
Lucy Goldman	Chief Financial Officer (Treasurer) & Director	20%
Gloria Perez Samson	Vice-President & Director	20%
Elizabeth Yuko Yamada	Second Vice-President & Director	20%

Integration

245. New Sounds proposes to integrate all five principals into the management of the station (New Sounds Exs. 2, 3, 4, 5 and 6).

246. Alice Marquis, President, Director and 20% owner of New Sounds, will serve as full-time General Manager of the station, serving a minimum of 40 hours per week (New Sounds Ex. 2). She will have primary supervisory responsibility for day-to-day station operations (including EEO), and for the establishment and implementation of procedures designed to ensure station compliance with all applicable FCC rules. The other four principals in the station will report to her as their General Manager (New Sounds Ex. 2; Tr. 4232, 4425).

247. Ms. Marquis has resided in the City of San Diego (La Jolla) for the past thirteen years, and within the proposed service area of the station, a few miles from San Diego, since 1961 (New Sounds Ex. 2; Tr. 4253). She received her PH.D degree from the University of California, San Diego, and M.A., teaching credential, and B.A. from San Diego State University (New Sounds Ex. 2).

248. Ms. Marquis was in the newspaper business as co-publisher of the Star News Publications in San Diego from 1961 to 1972, and the Pacifica Tribune in Northern California from 1954 to 1959 (New Sounds Ex. 2). She is a practicing historian. In the event the station application is granted, she plans to limit her activities as an historian to less than ten hours per week (New Sounds Ex. 2). She has written and published in historical publications two articles on the history of radio (New Sounds Ex. 2).

249. Ms. Marquis has been active in local civic and community organizations. She was a member of the San Diego Planning Commission from 1972 to 1976 (Chair, 1976) (New Sounds Ex. 2). Ms. Marquis has been and is a board member of the San Diego Independent Scholars. The association was founded in 1982. The Board is responsible for developing monthly meetings of the association and providing information about the scholarly activity of members (New Sounds Ex. 2).

250. From 1982 to 1984 Ms. Marquis belonged to "BLOB," an *ad hoc* San Diego (La Jolla) organization whose purpose was to "Ban Large Office Buildings" from La Jolla (New Sounds Ex. 2; Tr. 4261, 4262). She has been on the steering committee of the La Jolla (San Diego) Cultural Zone since founding of the committee in February or March of 1985 (New Sounds Ex. 2; Tr. 4263). She also belongs to the Chancellor's Associates, University of California at San Diego and is in her second year. The organization raises money for the University and has a voice in how the money is spent. Ms. Marquis also belongs to one of the committees (New Sounds Ex. 2; Tr. 4261). Ms. Marquis worked on an auction for KPBS for a couple of months in 1983, belongs to the San Diego Art Museum, and attends meetings of the San Diego Chapter of the World Affairs Council (New Sounds Ex. 2; Tr. 4222, 4263).

251. Celia Ballesteros, Secretary, Director and 20% owner of New Sounds, will serve as full-time Program Director of the station, serving a minimum of 40 hours per week (New Sounds Ex. 3). She will have primary responsibility for program acquisition and production, including the development of programming, insuring that the programming is responsive to the interests and needs of the community (New Sounds Ex. 3; Tr. 4040, 4042). She will report to the General Manager, Alice Marquis (New Sounds Ex. 3).

252. Ms. Ballesteros, who is Hispanic, has resided within the city limits of San Diego since 1975. Except for a three and one-half year period during the mid-fifties while her husband attended school and an eight to ten month period twenty years ago, she has lived within the city limits of San Diego or the primary service area of the proposed station since 1938 or 1939 (New Sounds Ex. 3; Tr. 4028).

253. Ms. Ballesteros has been in private practice in San Diego as an attorney for six years. She has an associate. She spends approximately 45 to 50 hours per week at her law practice. In the event the application is granted, she plans to spend a maximum of ten hours per week at her practice. She is training her associate to take on more responsibilities. If need be, she will disengage herself from her law practice completely as she did in 1983 when she ran for San Diego City Counsel (New Sounds Ex. 3; Tr. 4035).

254. Ms. Ballesteros has been active in local civic community organizations. For the past five years Ms. Ballesteros has been a board member for the San Diego region of the National Conference of Christians and Jews, strictly a San Diego organization (New Sounds Ex. 3; Tr. 4093). She is a founding board member (6 years) of the ALBA Scholarship Society, a San Diego organization located in San Diego (New Sounds Ex. 3; Tr. 4092). She is a founding member of the Chicano Federation of San Diego County, which she belonged to for several years in the early 1970's (New Sounds Ex. 3; Tr. 4096). She is the recipient of the 1981 Alice Paul Award from the National Women's Political Caucus of San Diego County for "Outstanding and Dedicated Service to the Cause of Equal Rights." (New Sounds Ex. 3).

255. Ms. Ballesteros formed a chapter of the La Raza Lawyers Association in the mid 1970's while in law school in San Diego and has been involved ever since. The association is involved in civic issues such as providing and improving legal representation for hispanic clients (New Sounds Ex. 3; Tr. 4093). She joined the Lawyers Club in 1980 which is involved in civic issues and founded a subcommittee on child abuse in San Diego (New Sounds Ex. 3; Tr. 4093, 4094). She joined the San Diego Bar Association, which is involved in civic issues, in 1979 (New Sounds Ex. 3; Tr. 4093, 4094). She has also performed *pro bono* legal work on behalf of La Raza and the San Diego Bar Association (Tr. 4093, 4094).

256. Ms. Ballesteros is a member of San Diego County's Fiscal and Justice Advisory Board (New Sounds Ex. 3). For the past five years, Ms. Ballesteros has been a Board Member of the Crime Victims Fund (New Sounds Ex. 3). She is a retired member of the Juvenile Justice Commission of San Diego (New Sounds Ex. 3; Tr. 4096, 4106). She also initiated and participated in developing workshops for professionals in the legal case management of court cases involving abused children (New Sounds Ex. 3). Ms. Ballesteros is one of twenty-four trustees of the California State University System, which has a campus in San Diego (New Sounds Ex. 3; Tr. 4011, 4099; VG Ex. 5). She was selected from the San Diego community to serve on the State-Wide Task Force on Comparable Worth (New Sounds Ex. 3; Tr. 4014), and the State Advisory Board for Women in Government (Tr. 4096).

257. Lucy Goldman, Chief Financial Officer (Treasurer), Director and 20% owner of New Sounds, will serve as full-time Business Director (Chief Financial Officer/Treasurer) of the station, serving a minimum of 40 hours per week (New Sounds Ex. 4). She will have primary responsibility for the financial affairs of the station. This includes maintaining the financial records of the station and handling such matters as workmen's compensation and insurance. She will also have primary responsibility for financial planning, labor relations and accounting. She will report to the General Manager, Alice Marquis (New Sounds Ex. 4). She will have secondary responsibility to Alice Marquis, the General Manager, for EEO (TR. 4232, 4425).

258. Ms. Goldman has resided in the city of San Diego from 1953 to the present time, except for a four year period from 1956 to 1960 when she lived outside the area (New Sounds Ex. 4; Tr. 4193).

259. Ms. Goldman is presently the Vice-President in charge of operations of a small chain of retail stores in San Diego called Yardage Town. The business is owned by her family. She owns a 15% interest, and has been involved in the business since 1971. She works approximately 30 hours per week. In the event the application is granted, she plans to spend a lot less than that; in no case more than ten hours per week at Yardage Town. She is training her son to take over her duties at Yardage Town in the event the application is granted. She also has real estate interests, and was the sole developer of a planned residential community in San Diego (New Sounds Ex. 4). At Yardage Town, Ms. Goldman handles personnel matters, general management, some buying, a little bit of everything and advertising. She supervises the pension plan and preparation of tax returns (Tr. 4196, 4236).

260. Ms. Goldman has been active in civic and local affairs. The City of San Diego has awarded her special commendation for "being at the forefront of civic affairs" (New Sounds Ex. 4). Since December 1984 she has served on the Convention Center Board of Directors (New Sounds Ex. 4). Prior to that she chaired the Convention Center on the Ballot Committee, 1980, Committee for Responsible Redevelopment, 1981, and Citizens for Fiscal Responsibility, 1979 (New Sounds Ex. 4).

261. She has been active in the San Diego chapter of the United Jewish Federation since 1975, and has served as Chair of the Community Relations Counsel (New Sounds Ex. 4; Tr. 4233). The Mayor of San Diego signed a proclamation declaring "Lucy Goldman Day" in recognition of her "outstanding contribution" as Chair of the Jewish Community Relations Counsel. The proclamation states that Ms. Goldman "has worked relentlessly on behalf of the Jewish and the general community in San Diego fighting for democratic ideals which are central to our American way of life (New Sounds Ex. 4).

262. Ms. Goldman has belonged to the San Diego chapter of the National Council of Christians and Jews since 1981, and in 1983 the board of the San Diego region elected her to the honor roll of friends of NCCJ (New Sounds Ex. 4; Tr. 4234). She was a founder and former president of Dimensions, a women's networking group in San Diego, and has been a member since 1979 (New Sounds Ex. 4; Tr. 4233). From 1980 to 1982 or 1983 she was a board member of the Institute for Burn Medicine, a San Diego organization (New Sounds Ex. 4; Tr. 4233). From 1975 to 1978 she belonged to the Ecology Center (former Vice-President and President of Board of Directors), a San Diego organization (New Sounds Ex. 4; Tr. 4233). Since 1982 she has been active in the Black-Jewish Dialogue Group (New Sounds Ex. 4; Tr. 4235).

263. Since September 1984 she has sat on the Steering Committee of the Institute of Judaic Studies as Co-Chair, an advisory committee at San Diego State University (New Sounds Ex. 4; Tr. 4234). Since 1985 she has acted in an advisory capacity to the President of San Diego State University as a community representative on the needs and feelings of the community (New Sounds Ex. 4; Tr. 4234). In 1981 she sat on the California State Small Busi-

ness Advisory Commission as a representative from San Diego (New Sounds Ex. 4; Tr. 4234). She has been active in the Emek Hefer-San Diego Sister County Commission, 1981 to 1982, the YMCA sustaining fund, 1981, the New Life Club since 1980, Second Generation since 1984, San Diego and La Jolla Museums of Art, and was a brownie troop leader from 1970 to 1972.

264. Gloria Perez Samson, Vice-President, Director and 20% owner of New Sounds, will serve as full-time Community Affairs Director of the station with primary responsibility for station promotion and for continuing ascertainment of the interests and needs of the San Diego community. She will work closely with the Program Director, Celia Ballesteros, in developing public affairs programming responsive to identified needs. She will serve a minimum of 40 hours per week. She will report to the General Manager, Alice Marquis (New Sounds 5).

265. Ms. Samson, who is Hispanic, has resided in the city of San Diego from 1970 to the present time, and was a student at San Diego State in the mid-1960's (New Sounds Exs. 1 and 5; Tr. 4150-4152).

266. Ms. Samson is presently employed full-time as a secondary school administrator (assistant principal) with the Sweetwater Union High School District in Chula Vista, California (New Sounds Ex. 5). The school is located in San Diego city (Tr. 4152). In her position she has developed and administered programs totaling several hundred thousand dollars. In the past, she has designed, written and developed federally funded, multi-million dollar programs (New Sounds Ex. 5). In the event the application is granted, she intends to resign her present position to devote full-time to the station (New Sounds Ex. 5).

267. Ms. Samson has been active in civic and local affairs. She served on the San Diego City Library Commission from 1978 to 1980 (New Sounds Ex. 5). She has been the non-lawyer member from 1981 to the present on the board of the Center for Public Interest, University of San Diego (New Sounds Ex. 5). From 1978 to 1980 she was a board member on the Chicano Civic Committee (New Sounds Ex. 5). Since forming it in 1982, Ms. Samson has been a board member and treasurer of the South Bay Committee, a political action committee, which serves San Diego and areas to its south (New Sounds Ex. 5).

268. Ms. Samson is on the fundraising committee for St. Vincent's Church, since 1983 (New Sounds Ex. 5). She was a parent panel member for All Saints School, San Diego, 1982-1983 (New Sounds Ex. 5). She was also a brownie co-leader and leader and Girl Scout Cookie Chairperson, 1982-1983 (New Sounds Ex. 5). Ms. Samson also is involved in the California Teachers Association, Association of Mexican/American Educators, South Bay Chapter (Treasurer), California Association for Teachers of English to Speakers of other Languages, and Association of California School Administrators (New Sounds Ex. 5). Since 1976 she has presented workshops on bilingual education and comparisons of Mexican and American school systems, and organized visits to Mexican schools by school administrators (New Sounds Ex. 5).

269. Elizabeth Yuko Yamada, Second Vice-President, Director and 20% owner of New Sounds, will serve as full-time Sales Director of the station, serving a minimum of 40 hours per week. She will have primary responsibility for training and supervision of the station's sales staff and business development. She will report to the General Manager, Alice Marquis (New Sounds Ex. 6).

270. Ms. Yamada, who is Asian/American, has resided in the city limits of San Diego since 1941 except for the three years when the Japanese/American community was evacuated from the West Coast, and when she attended the University of California at Berkeley in the early 1950's (New Sounds Ex. 6).

271. She is presently Marketing Director and Business Coordinator of a landscape architectural firm, Wimmer Yamada & Associates, in San Diego (New Sounds Ex. 6). She spends approximately 40 hour per week at the firm. In the event the application is granted she plans to work at the architectural firm no more than 3 to 5 hours per week and will no longer handle marketing and administrative responsibilities for the firm (New Sounds Ex. 6; Tr. 4117)

272. Ms. Yamada has been active in civic and local affairs. Since June 1984 she has served on the Facilities Committee of the San Diego Parks and Recreation Board (New Sounds Ex. 6; Tr. 4144). For the past five years she has been a trustee of the San Diego Museum of Photographic Arts (New Sounds Ex. 6; Tr. 4144). She was appointed to the United Way Board of Directors in June 1984 (New Sounds Ex. 6; Tr. 4113-4143).

273. Since June 1984 she has served on the San Diego International Affairs Board, and, in recognition, was awarded a certificate of appreciation from the Mayor of the City of San Diego (New Sounds Ex. 6). She is active in the San Diego State University Advisory Council to Japan Studies Institute. As co-chairman she spent six months in 1984 to 1985, and again in 1985 to 1986 planning a San Diego State University event. The festival, called "Salute to Japan," was well received by Japanese guests and the San Diego community (New Sounds Ex. 6; Tr. 4144). She is the only San Diegan on the National Landscape Architecture Foundation and established the first scholarship for women in landscape architecture in the name of Harriet Barnhardt Wimmer, the founder of her San Diego design firm (New Sounds Ex. 6; Tr. 4147). She was awarded an honorary service award for organizing a research library in the 1960's by the PTA, and was active in the PTA until the 1970's (New Sounds Ex. 6; Tr. 4145). She is a member of the Asian Arts Committee of San Diego Museum of Art, Women's Architectural League and Dimensions, a San Diego women's networking organization (New Sounds Ex. 6).

Diversification

274. None of the five principals holds an interest in or connection with the licensee of, or applicant for, any broadcast station or other medium of mass communication, with the exception of their interests in the New Sounds application itself (New Sounds Ex. 2, 3, 4, 5 and 6). Celia Ballesteros, one of the principals, is one of twenty-four members of the Board of Trustees of the California State University System (New Sounds Ex. 3; VG Ex. 5). The California State University system is the licensee of KPBS-TV in San Diego, a non-commercial educational broadcast station (VG Ex. 5; Tr. 4245). Ms. Ballesteros was appointed by the Governor (VG Ex. 5). Her term expires in 1987 (New Sounds Ex. 3; Tr. 4011, 4041, 4099).

Auxiliary Power

275. In the event of a grant of the New Sounds application, auxiliary power generators will be installed at the transmitter site and studio location (New Sounds Ex. 8).

SAN DIEGO BROADCASTING (SDB)

Background

276. SDB is a limited partnership under the laws of the State of California. The limited partnership is composed of four individual general partners and two limited partners. The ownership structure of SDB is as follows:

Principal	Position	Voting and/or Equity Interest
Uvaldo A. Martinez, Jr.	GP	10% Equity 25% Voting
Rudolph P. Murillo	GP	10% Equity 25% Voting
Rose Marie Saenz	GP	10% Equity 25% Voting
Thomas R. Jimenez[55]	GP	10% Equity 25% Voting
	LP	10% Equity
Liquid Investments, Inc.	LP	50% Equity

Section 603.1 of SDB's Limited Partnership Agreement provides that no limited partner shall take part in the control, conduct or operation of the partnership (SDB Ex. 15A, p. 12). The Second Amendment to the Agreement further provides that a limited partners may not act as an employee or communicate with a General Partner or the Partnership on matters pertaining to day to day business operation (SDB Ex. 15C, p. 4).

277. Liquid Investments, Inc. is a corporation, 100% of whose issued stock is owned by Ronald L. Fowler. Fowler resides in Rancho Santa Fe, California (SDB Ex. 1, p. 2).

278. The following individuals serve as officers and/or directors of Liquid Investments, Inc.:

Ronald L. Fowler	President/Director
Ronald F. Cady	Executive Vice President Secretary/Director
Jack Studebaker	Director
Jon N. Garner	Vice President
Joanne E. Cochran	Vice President/Treasurer

279. Sometime in 1984, Martinez was approached by Ronald Fowler at a social function at the Hotel Del Coronado about the possibility of forming an applicant to apply for the deleted facilities of KIFM(FM) (Tr. 4826, 4827). As a result of Fowler's inquiry, Martinez attended a meeting at Fowler's office at Mesa Distributing Company (Tr. 4827-4828). Liquid Investments owns 100 percent of Mesa Distributing. A second meeting was held a week to ten days later. In attendance at this second meeting were Martinez, Fowler, Amy Stripe, and Jack Studebaker (Tr. 4829). Ms. Stripe is Fowler's executive assistant. Studebaker, in addition to being on the five-member Board of Directors of Liquid Investments, is also counsel to that firm and was attending the meeting in that capacity (Tr. 4829-4830; SDB Ex. 1, pp. 1-2).

280. At this second meeting, which was also held at Mesa Distributing, Fowler, Studebaker and Martinez discussed the alternative forms of organization. Studebaker took the lead in suggesting the alternatives that were available, including the use of a limited partnership (Tr. 4830). Rudolph Murillo and Ms. Rose Marie Saenz were proposed to be general partners with Martinez (Tr. 4831). Martinez recruited Murillo and Ms. Saenz to participate in the venture (Tr. 4455, 4457-4460, 4465, 4892, 4894-4895). Martinez had known both for several years prior to the organization of SDB. Murillo had served as Martinez' executive assistant and Martinez knew Ms. Saenz from working with her in political and community organizations as well as socially (Tr. 4447, 4892-4893).

281. A subsequent meeting, this time with Murillo in attendance, was held in Studebaker's office on or about July 24, 1984, three days before the San Diego Broadcasting application was filed (Tr. 4469-4470). Studebaker mentioned the retention of Washington communications counsel to assist in the filing of the application. Amy Stripe was also present at that meeting, as a representative of Liquid Investments (Tr. 4494-4495). While Ms. Stripe answered questions put to her by the general partners, her primary role at this and other meetings was to monitor the meetings for the limited partner (Tr. 4492-4494, 4829, 4912-4913). Ms. Stripe did not vote on any matter before the partners, or otherwise participate in partnership decisions (Tr. 4495-4497, 4552).

282. The limited partnership agreement itself was prepared by Studebaker (Tr. 4843). Studebaker was hired by the partnership at the suggestion of Martinez, sometime between July 19, 1986 and the filing of the application eight days later (Tr. 4843-4844). At the time of his hiring, Studebaker made clear to Fowler that with respect to the SDB application, he would not represent Liquid Investment and the corporation would have to seek other counsel (Tr. 4887-4888).[56] The decision to hire Studebaker took place at a meeting in Studebaker's office (Tr. 4844). Studebaker's fee for his attendance at the two meetings at Fowler's office was paid for by Liquid Investments (Tr. 4844). San Diego Broadcasting never reimbursed Liquid Investments for this fee (Tr. 4845).

283. Meetings of the San Diego Broadcasting partnership were generally held at the offices of Studebaker (Tr. 4598). Jimenez recalled two meetings that were held at a place other than Studebaker's office. One was held at the Coronado golf course. The other was held at the Westgate Hotel. While Ms. Saenz attended the meeting at the Westgate Hotel, she was not in attendance at the Coronado golf course meeting (Tr. 4598-4599). SDB's address listed on the application and its place of business, as reflected in the limited partnership agreement, is 9191 Town Center Drive, Suite 290, the office address of Liquid Investments (Tr. 4601). No meeting of the partnership has been held there (Tr. 4915). San Diego Broadcasting's local public file is kept in Studebaker's office (Tr. 4600). SDB retained the same FCC counsel as had been used by Fowler on the recommendation of Studebaker (Tr. 4846). Prior to retaining FCC counsel, Murillo, acting on behalf of the partners, investigated Washington counsel's credentials (Tr. 4471, 4473, 4846). The general partners were aware when they retained Washington counsel that it had represented Fowler on other broadcast matters (Tr. 4475, 4846).

284. SDB's application was prepared in final form by Studebaker (Tr. 4832). All of the initial general partners participated in the preparation of SDB's application. At an

early meeting, they went through the application page by page and prepared it as a group (Tr. 4845, 4910). Each of them then signed the application after reviewing it (Tr. 4842, 4910). They also had input in the drafting of SDB's Limited Partnership Agreement and in the drafting of subsequent amendments to that agreement (Tr. 4508, 4512, 4514, 4522, 4552, 4574, 4781, 4853, 4855, 4901, 4903, 4908). Murillo and Jiminez had their respective personal attorneys review the draft of the agreement. Only after these reviews were completed did the general partners execute the agreement (Tr. 4521, 4522, 4577, 4843).

285. The record reflects the general partners have been involved in the prosecution of the SDB application. They met and agreed to form a limited partnership applicant (Tr. 4456, 4895-4896, 4897), agreed to a specific budget for prosecuting the application and a schedule of cash calls in order to fund prosecution of the application (ComTrends Ex. 9, p. 2), agreed to retain local counsel and Washington communications counsel (Tr. 4470-4471, 4843-4844, 4845, 4911), agreed to amend their limited partnership agreement (Tr. 4509-4510, 4783, 4853, 4855), and agreed to have each partner take a management role at the proposed station which complemented his or her personal background and experience (Tr. 4759, 4848-4849, 4906).

286. At the time of the filing of SDB's application, the SDB partnership included no general partner with broadcast experience. The general partners decided, upon the recommendation of communications counsel, that it would be beneficial to bring into the partnership a minority individual who had some broadcast experience (Tr. 4838). None of the general partners was familiar with an individual with the proper credentials, and they directed their local counsel to see if he could locate anyone who would fit the bill (Tr. 4837, 4883). Fowler, whose company advertises on many San Diego stations, had previously conducted business with stations with which Thomas Jimenez was associated (Tr. 4561, 4804, 4805). Fowler contacted Jimenez on behalf of the general partners and asked him if he was interested in discussing the matter further (Tr. 4559, 4562). Fowler did not negotiate with Jimenez or make him any offer (Tr. 4568, 4810). Instead, Fowler told Jimenez that, if he were interested in pursuing the idea, he should speak to the counsel to the general partners, Studebaker (Tr. 4562, 4566, 4883-4884). At that point, Fowler's discussions with Jimenez with respect to his joining the partnership ceased (Tr. 4569-4570). Jimenez and Studebaker (acting on behalf of the partnership) negotiated Jimenez' involvement in the partnership (Tr. 4566-4567, 4573, 4576, 4582-4583, 4801, 4804, 4815-4816). The general partners accepted Jimenez as a partner, but only on their stated terms. Jimenez' ownership interest had to come from the limited partners' equity position and Jimenez was not permitted to obtain any greater control rights than any of the other general partners held (Tr. 4811, 4884).[57]

287. Each of SDB's general partners have a significant financial stake in this application (Tr. 4610). Each of the general partners is responsible for his or her *pro rata* share of applicant expenses and each recognizes this to be so (Tr. 4610, 4611, 4617, 4619, 4895, 4906, 4931-32). If SDB is unsuccessful in pursuing a grant of its application, the partners will not be reimbursed for their losses (Tr. 4617). The Limited Partnership Agreement, by its terms, specifies the percentage capital contribution which each general and limited partner must make . SDB Ex. 15, Section A, p. 9 (Section 5.04); Section B, p. 3 (Section 5.04). Liquid Investment has made no loans, nor formally committed itself to make loans, either to the partnership or the individual general partners (Tr. 4612).[58]

Integration

288. SDB proposes to integrate all of its general partners into management positions at its station. Thomas R. Jimenez will serve as the full-time General Manager of the proposed station, devoting a minimum of 40 hours per week to his position. Rudolph P. Murillo will serve as the full- time Station Manager and Assistant General Manager of the proposed station, devoting a minimum of 40 hours per week to his positions. Uvaldo A. Martinez, Jr., will serve as the full-time Program Director of the proposed station, devoting a minimum of 40 hours per week to his position. Rose Marie Saenz will serve as Director of Public Affairs of the proposed station, devoting a minimum of 40 hours per week to her position. Ronald Fowler will not be involved in the management or operation of the proposed station (SDB Ex. 3, pp. 102; Ex. 4, p. 2; Ex. 5, p. 2; Ex. 6, p. 1; Ex. 7, p. 2).

289. In his capacity as General Manager of the proposed station, Jimenez will oversee the activities of all station departments, determine major station policies, and supervise the day-to-day operations of the entire station (SDB Ex. 3, p. 1; SDB Ex. 4, p. 2; Tr. 4758, 4760).

290. Jimenez, a Hispanic male, was born on May 31, 1943. He currently resides at 6128 Lourdes Terrace Drive, San Diego. He has resided at this address since September 1983. Between April 1975 and September 1983, he resided at 6911 Mote Verde, San Diego. Between May 1973 and April 1975, he resided at 4685 Hamilton Avenue, San Diego. Between September 1961 and August 1967, and again between January 1969 and November 1969, he resided at a number of residences located in San Diego (SDB Ex. 4, pp. 1-2; Tr. 4554).

291. Jimenez attended San Diego State University, where he graduated in June 1966, with a degree in business and marketing. He obtained a graduate degree in international management from the Thunderbird Graduate School of International Management in Phoenix, Arizona in May of 1968 (SDB Ex. 4, p. 1).

292. Jimenez has been employed in broadcasting for over 12 years. His first position was with station KFMB and KFMB-FM, San Diego. He worked at those stations as an Account Executive from July 1973 until March 1979. Jimenez then moved to Stations XETRA, Tijuana, Mexico and XETRA-FM, Rosarita Beach, Mexico (serving the San Diego market), where he was hired as Local Sales Manager in April 1979. Approximately one year later, he was promoted to General Sales Manager, a position he presently occupies. As General Sales Manager, Jimenez oversees the stations' sales department as well as the day-to-day internal operations of the stations. The position is of a supervisory nature (SDB Ex. 4, p. 2; Tr. 4570). Should SDB receive a construction permit in this proceeding, Jimenez will resign from stations XETRA and XETRA-FM to work as General Manager of SDB's station (SDB Ex. 4, p. 2).

293. Jimenez has been involved with the following community and civic organizations. Since 1979, he has been a member of the San Diego Ad Club, a non-profit professional organization which, among other things, conducts charitable work within the city of San Diego. From July

1984 until June 1985, he served on the Board of Directors of this organization. His employer pays the dues for this organization. Since 1977, he has been a Parishioner at St. Therese Church in San Diego. He served as an usher at the church for one year. He has been a member of the St. Therese Academy Parents- Teachers Group since 1982. He has served on the Board of Trustees of the Mexican-American Foundation since April 1985. The Mexican-American Foundation is a charitable group whose goal is to assist in promoting better communications between the San Diego Hispanic and Majority committees. It also assists local San Diego Hispanic students to obtain college scholarships. He has been a member of the Media Relations Committee of this organization since September 1985 (SDB Ex. 4, pp. 2-3).

294. In his capacity as Station Manager and Assistant General Manager of the proposed station, Rudolph Murillo will be responsible for overseeing the business and financial affairs of the station, including budgeting, accounting, financial control, collection, capital planning, and asset management. He will also supervise the station's compliance with applicable laws and regulations, including ensuring that the station's business practices conform to federal, state, and local requirements. Finally, he will be responsible for ensuring that the station complies with the various filing and reporting requirements of the different government agencies. He will serve as General Manager in the absence of the General Manager. He will supervise those employees necessary to fulfill the above responsibilities (SDB Ex. 3, pp. 1-2; SDB Ex. 5, pp. 2-3; Tr. 4760-4761).

295. Murillo, a Hispanic male, presently resides at 630 Margarita Avenue in Coronado, and has resided at that address since 1979. The community of Coronado adjoins San Diego, and Murrillo's residence is approximately 0.5 miles from the San Diego city limits. Murillo formerly resided at 120 "C Avenue, Coronado, from 1947 until 1950, and 415 "A" Avenue, Coronado, from 1950 until 1973. Additionally, while working as an Administrative Assistant to Congressman Lionel Van Deerlin in Washington, D.C. from 1973 until 1979, he often visited San Diego and resided at the "A" Avenue address listed above. Each of the above residences is within the city-grade coverage contour of SDB (SDB Ex. 5, pp. 1-2; Tr. 4442).

296. Murillo attended the University of California at San Diego from September 1965 until May 1971, where he obtained Bachelors and Masters degrees in Chemistry. He then attended California Western School of Law in San Diego from September 1971 until May 1973 and later attended the University of Ireland, University College Galway from October 1977 until June 1978, where he obtained an LL.B degree (SDB Ex. 5, p. 1; Tr. 4443).

297. Murillo worked as an Administrative Assistant to Congressman Lionel Van Deerlin from May 1973 until October 1979, with the exception of the period October 1977 until June 1978, when he took a leave of absence to attend the University of Ireland. From November 1979 until December 1982, he served as Assistant to the Port Director, San Diego Unified Port District. He was responsible for legislative projects under the direction of the Port Director. Most recently, he has served as Chief of Staff and Executive Assistant to San Diego City Councilman Uvaldo Martinez, Jr., where he was responsible for supervising the professional staff and related clerical employees (SDB Ex. 5, 2; Tr. 4446-4448). In the event SDB's application is granted, Murillo will resign from his current position to fulfill his integration commitment at the station (SDB Ex. 5, p. 3).

298. Murillo has been involved with the following community and civic organizations. He has served as a member of the Advisory Committee to the Center for U.S.-Mexican Studies at the University of California at San Diego since 1982. The advisory Committee raises money for the Center and also seeks to promote the Center and its objectives in the San Diego business community. He served as a Member of the University of California at San Diego Chancellor's Associates (1978-1981, 1984-1985) and the San Diego State University President's Circle (1981 to present). The purpose of these groups is to meet with university officials and provide funds to those officials to be used for grants to graduate students and visiting assistant professors. He has been a financial benefactor and an informal advisor to Station KPBS (San Diego Public Broadcasting Network) from 1981 until the present. He has been an Executive Committee Member of the San Diego Democratic Association since 1981. He served as Alternate to the Vice Chairman of the San Diego Downtown Marketing Consortium since 1984. The objective of this group is to attempt to renovate the downtown San Diego area. He has been a member of Coronado Mens' Golf Club since 1966, serving on various committees, as well as being an associate member of the San Diego Rugby Club since 1984 (SDB Ex. 5, p. 3; Tr. 4526-4528, 4530-4538, 4539-4540, 4549-4550).

299. In his capacity as Program Director of the proposed station, Uvaldo Martinez, Jr., will be responsible for directing and managing the programming at the proposed facility, including the production, development, purchase, and scheduling of such programming, and will supervise those employees necessary to fulfill these responsibilities (SDB Ex. 3, p. 1; SDB Ex. 7, p. 2; Tr. 4848).

300. Martinez, a Hispanic male, was born in National City, California on December 1, 1942. He has resided either in San Diego or in surrounding communities in the San Diego area throughout his entire life. He currently resides at 3048 Laurel Street in San Diego, and has lived there since 1977. Each residence that he has resided in since his birth has been within SDB's proposed city-grade coverage contour (SDB Ex. 7, p. 1; Tr. 4817).

301. Martinez graduated from St. Augustine High School in San Diego in 1960, and, graduated from National University in 1979 (SDB EX. 7, p. 1). From 1971 until 1981, Martinez was an Urban Planner for the City of San Diego Planning Department. From 1981 to 1982, he was President of his own urban planning consulting firm called UM Enterprises. Since 1982, he has served as Councilman for the Eighth District of the City of San Diego (SDB Ex. 7, pp. 1- 2; Tr. 4817).[59] In the event SDB receives a construction permit, Martinez will resign his current position to effectuate his integration commitment at SDB's station.

302. Martinez has been involved with the following community and civic organizations. He has served as State Vice Chairman of the Republican Hispanic Council from 1982 to the present. He has been a member of that group since 1980. He has served on the State Board of the California Republican Party since 1980. He was on the San Diego Republican Central Committee from 1978 until 1982, and was Chairman of the Republican Caucus from the 79th Assembly District during that period. He has been a member of the Downtown Republican Business

and Professional Club since 1978. He was Chairman of the Hispanics for Reagan-Bush in San Diego County during the 1984 election. He was a member of the San Diego Chapter of the Republican Associates from 1978 until 1982 and served as President of that group in 1979. He has been a member of the Board of Directors of the local San Diego Chapter of the American Cancer Society since 1982. He has been a member of that organization from 1977 until the present. He has been a member of the San Diego Chapter of the Salvation Army Board of Directors since 1983. He has served as a member of the Executive Board of the San Diego County Chapter of the Boy Scouts of America since 1983. He was President of the San Diego County Polomino Baseball Association from 1980 until 1983. He has been a member of the Executive Board of the San Diego County Chapter of the Girl Scouts of America since 1983. He has been a member of the St. Vincent De Paul Center Advisory Board since 1984. The purpose of this organization is to provide services to San Diego's homeless. He has been a member of the San Diego Samahan Dance Company Advisory Board since 1983. He has been a member of the St. Augustine High School Board of Trustees since 1983. He has been a member of the National Association of Latino Elected Officials since 1983 (SDB Ex. 7, pp. 2-3; Tr. 4860-4861).

303. Martinez has also been involved in the following San Diego charitable organizations. He has served we as Chairman of the Board of the Adapts Program Fundraising Drive from 1983 until the present; Chairman of the Board of the Casa Familiar Fundraising Drive from 1982 until the present; Chairman of the Board of Padre Serra Center Thanksgiving Turkey Drive for the past three years; and Co-Chairman of the Annual United Cerebral Palsy Fundraising Golf Tournament in 1984 and 1985 (SDB Ex. 7, p. 4; Tr. 4862-4863). Martinez also has been a member of St. Patrick's Parish Church, located in San Diego, and served as a member of the Parish Council from 1982 to 1984 (SDB Ex. 7, p. 4; Tr. 4862-4865).

304. In her capacity as Director of Public Affairs of the proposed station, Rose Marie Saenz will be responsible for directing the station's ongoing efforts to identify the problems, needs, and interests of the San Diego community, and will develop and supervise the production of public affairs programming and public service announcements responsive to those problems, needs, and interests. She will be responsible for a program of public awareness of the station, including the establishment and coordination of advisory groups for programming input. She will also be responsible for administering and implementing the station's Equal Employment Opportunity Program. She will supervise those employees necessary to fulfill the above responsibilities (SDB Ex. 3, p. 2; SDB Ex. 6, pp. 1-2; Tr. 4916-4917, 4921).

305. Ms. Saenz, a Hispanic female, was born on June 28, 1945. She currently resides at 8092 Caminito Gianna, La Jolla (San Diego), California. She has resided at that address since 1982. Prior to that, she lived in Solano Beach from 1980 until 1982, and in the Pacific Beach section of San Diego from 1978 to 1980. Each of the above residences are within SDB's city grade coverage contour (SDB Ex. 6, p. 1; Tr. 4890, 4939).

306. Ms. Saenz graduated from Stephen F. Austin State University with a degree in Education in 1969. She also received a Management Certificate from Arizona State University Center for Executive Development School of Business in 1973 (SDB Ex. 6, p. 1). Ms. Saenz is presently employed at the San Diego Housing Commission, where she serves as an Equal Employment Opportunity Officer. Should SDB receive a construction permit, Ms. Saenz will resign from her employment at the San Diego Housing Commission to effectuate her integration commitment (SDB Ex. 6, p. 2).

307. Ms. Saenz has been involved with the following community and civic organizations. She served as Secretary of the San Diego Chapter of LULAC from 1979 to 1981. She was a member of the Board of Directors of the San Diego Chapter of the Legal Aid Society from 1980 until 1981. She has been a member of the California Republican Hispanic Council, San Diego Chapter, from 1983, and has served as President of that organization since 1984. She served as a volunteer coordinator for United Way in San Diego during 1983. She was a member of the American Association of University Women in 1983. She has been a member of the Zoological Society of San Diego since 1983. She was a member of the National Hispanic Women's Network from 1983 until 1984. She was a member of the Park and Recreation Board in San Diego from 1984 until 1985. She was a member of the 1984 Bi-Partisian Voter Registration Drive in San Diego (SDB Ex. 6, p. 2).

Diversification

308. SDB has no other ownership interest in any medium of mass communications. Other than their interests in SDB, none of the SDB's general partners have any ownership interests in any broadcast station or other medium of mass communications. Thomas R. Jimenez presently is general sales manager at Station XETRA, Tijuana, Mexico, and XETRA-FM, Rosarita Beach, Mexico. Jimenez has stated that he will resign his position and sever all ties with XETRA and XETRA-FM prior to the commencement of program test authority in order to assume the position of General Manager at SDB's proposed San Diego station (SDB Ex. 2; SDB Ex. 4, p. 2).

309. Other than its interest in SDB, Liquid Investments, Inc. has no ownership interest in any broadcast station or other medium of mass communications. Ronald L. Fowler, 100% owner of Liquid Investments, Inc. is also 100% owner of Summit Broadcasting, licensee of Station KSMT(FM), Breckenridge, Colorado. Summit Broadcasting has filed applications for FM translators at Frisco and Dillon-Silverthorn, Colorado. Fowler has stated that, in the event SDB's application is granted, he will divest himself of his interest in and will sever any connection with Summit Broadcasting and KSMT(FM) prior to the commencement of program test authority. In its *Hearing Designation Order*, the Commission conditioned a grant to SDB on Fowler's divestiture of his interest in station KSMT and Summit Broadcasting. None of the other officers or directors of Liquid Investments, Inc. have any ownership interest in or connection with any other medium of mass communications outside of this application (SDB Ex. 2).

Auxiliary Power

310. SDB will have an auxiliary power system for both its transmitter system and studio in order to permit the station to remain on the air in the event of a power outage (SDB Ex. 8).

AMERICAN MEDIA GROUP (AMG)

Background

311. American Media Group, Limited Partnership (AMG) is a California limited partnership. AMG's certificate of limited partnership was filed with the Secretary of State of California, on September 20, 1984 (AMG Ex. 21A). AMG was governed by a Memorandum of Understanding, executed July 26, 1984, until a Limited Partnership Agreement was executed on September 10, 1985 (AMG Exs. 21B, 21C). AMG's principals are as follows:

Name	Title	Ownership %
Rosalinda I. Molina	General Partner	16.67%
Hector Molina	Limited Partner	16.67%
Mark A. Battaglia Chavez	Limited Partner	33.33%
Thomas A. Moore Grimaldo	Limited Partner	33.33%

(AMG Ex. 1).

312. Rosalinda Molina had no initial involvement in the formation of AMG. In mid-June 1984, her husband, Hector Molina, was contacted by communications attorney, Ernest Sanchez, concerning the availability of the San Diego FM station. Mr. Molina had known Sanchez through his broadcast employment (Tr. 5109). Prior to his employment with Station KPBS-FM, San Diego, Mr. Molina was employed by Station KBBF-FM, Santa Rosa, California. From 1975 to 1977, he served as Interim General Manager; from 1973 to 1975, he served as Spanish Language News Director (Tr. 5106).

313. Hector Molina decided to put together a group to apply for the station, a group which did not include his wife. He contacted Thomas Moore, and then Mark Battaglia (Tr. 5072-5073). The three of them knew each other on a social basis only (Tr. 5114-5115; EBC Ex. 9, p. 17). Messrs. Molina, Moore and Battaglia met with Sanchez in San Diego during the second week of July, 1984. Within a few days thereafter, Messrs. Molina, Moore and Battaglia met again and decided to go forward with the filing of an application and to retain Sanchez as counsel (Tr. 5110-5111). According to Moore, counsel made the decision to use the limited partnership form for AMG (EBC Ex. 9, p. 26). Counsel then drafted a memorandum of understanding setting forth the agreement of the three principals regarding the terms of the limited partnership (Tr. 5119). The memorandum was thereafter reviewed by the three principals in a telephone conference call with counsel (Tr. 5156-5157).

314. At that time Hector Molina, who was not a United States citizen, intended to become AMG's general partner. He had passed a U. S. citizenship test, but he had not yet been sworn in. Counsel encouraged Mr. Molina to try to resolve the citizenship issue before AMG's application was filed, and Mr. Molina made unavailing efforts to expedite the processing of his citizenship through contacts with a member of the U.S. Congress and the Immigration and Naturalization Service. Mr. Molina testified that in the third week of July, he learned that he was not going to attain U.S. citizenship status before the July 27, 1984 deadline for filing AMG's application. In view of his status, Counsel advised him not to be general partner of AMG. When Mr. Molina told Messrs. Moore and Battaglia of the problem, they indicated that they wanted to go forward with the application, and they asked him to find someone to replace him as general partner. Mr. Molina approached a Hispanic female attorney, who was well-known in San Diego. When she declined to join AMG, Mr. Molina expected that AMG would not go forward with an application. Mr. Molina then informed his wife, Rosalinda, that AMG was not going to be able to file an application for the station because a general partner could not be found, and in that conversation, Mrs. Molina asked to be considered for the position of AMG's general partner. Mr. Molina then consulted with Messrs. Moore and Battaglia, and without meeting or speaking with Rosalinda Molina, they accepted her as a replacement for her husband (Tr. 5018-5019, 5072-5074, 5111-5112). Mrs. Molina was then introduced to Sanchez by phone, and according to her testimony, "[F]rom that moment on I was working with legal counsel to get the application filed" (Tr. 5019).

315. Mrs. Molina's only substantive involvement in the preparation of AMG's application was to provide counsel with a draft programming proposal for counsel's review and editing prior to inclusion in the application. Hector Molina obtained information from Messrs. Moore and Battaglia for purposes of completing the application. Hector Molina prepared AMG's Model EEO Program contained in the application. Hector Molina provided his wife with information which served as a basis for AMG's financial certification, including budget information. Mrs. Molina did not speak directly with either, Moore or Battaglia, whose financial commitments AMG apparently was relying on for financial certification. Mrs. Molina was not provided balance sheets or any other documents evidencing the two limited partners' financial status or their commitment of funds to AMG (Tr. 5043-5056).

316. AMG's Memorandum of Understanding (Memorandum) which, by its terms, was reached as of July 24, 1984, was prepared by counsel and executed by the parties on July 26, 1984 (AMG Ex. 21B). Hector Molina testified that the Memorandum was identical to that which had previously been prepared with him in mind as AMG's general partner, except that his wife's name was inserted as general partner with a 1/6th ownership interest and his name was inserted as a limited partner with a 1/6th ownership interest (Tr. 5157). The Memorandum stated that Rosalinda Molina's interest was received, *inter alia*, in return for "the time she has spent and will be spending in furtherance of the partnership's business (such as helping communications counsel as much as possible with the application and the comparative hearing work in order to keep legal fees as low as possible). . . ." (AMG Ex. 21B, p. 2).[60] However, in addition to relying on her husband for the bulk of the groundwork for preparing AMG's application, Mrs. Molina relied on her husband to handle much, if not all, of the limited partnership's business.

317. The record reflect that Mrs. Molina was incapacitated by illness for a brief period of time, beginning Thursday, July 26, 1984, the day before AMG's application was filed. She was hospitalized over the weekend, and returned to work in the middle of the following week (Tr. 5027, 5169). During the time that Mrs. Molina was incapacitated, her husband handled some of AMG's business, such as publication of the local public notice (Tr. 5061, 5141). He also prepared and filed AMG's fictitious business name statement with the County Clerk's office on

July 26, 1984. Mrs. Molina testified that she personally reviewed the statement for accuracy, but Mr. Molina testified that his wife did not review the statement (Tr. 5037-5038, 5138). The form statement, as filled out by Mr. Molina, contained an error. Although the instructions in the body of the statement required the name and address of each *general* partner to be inserted, each of the *limited* partners' names and addresses, in addition to Rosalinda Molina's, appear on the statement (EBC Ex. 7).

318. Hector Molina opened AMG's checking account on the day Mrs. Molina was discharged from the hospital. According to the Molinas' hearing testimony, they didn't wait until Mrs. Molina was well enough to handle the matter because counsel had already requested payment (Tr. 5035, 5141, 5168- 5169). In the establishment of the account, check signing privileges were provided each of the four AMG principals, and two signatures were required for all checks. Mrs. Molina testified that she signed only one check until September 1985 when, per advice of counsel, the signature card was changed to permit her signature, alone, on AMG's checks (Tr. 5036, 5096-5097, 5169-5170). Prior to the recommendation of counsel that Mrs. Molina have sole check signing authority, Hector Molina handled AMG's finances. He met with Messrs. Moore and Battaglia to obtain funds each time a bill was due to be paid; he obtained at least one of their signatures on each check written on AMG's account; and, he made all deposits in AMG's account (Tr. 5060-5061, 5080-5082, 5142).

319. Hector Molina also provided AMG's public inspection file to Thomas Moore's office where the file was initially housed. Mr. Molina removed the file and took it to the Molinas' residence during the summer of 1985 (Tr. 5139-5141). Rosalinda Molina testified that during the time the public file was kept in Mr. Moore's office, she never placed any documents in the public file, and she did not know who was responsible for maintaining the file (Tr. 5035). Mrs. Molina's testimony also indicated that she did not know who was responsible for arranging AMG's publication of the hearing designation order. While she assumed that her husband handled it, AMG's counsel stated on the record that AMG participated in a joint publication with other parties (Tr. 5061-5062).

320. Rosalinda Molina could not be specific as to any services she provided to AMG prior to September 1985, other than communicating with counsel (Tr. 5042-5043, 5059). On cross examination, she testified that she was aware of the requirement of FCC applicants to update information contained in their applications, and she testified that she notified counsel of her husband's attaining U.S. citizenship status. However, an amendment to AMG's application reporting that Mr. Molina was sworn in as a U.S. citizen on April 26, 1985, was not filed until June 27, 1985. And, it was filed pursuant to instructions contained in the Hearing Designation Order (released May 28, 1985) requiring AMG to submit an amendment, within 30 days after the release date, clarifying the status of Mr. Molina's citizenship (Tr. 5091-5096).

321. Mr. Molina testified that his wife took care of preparing and filing the Certificate of Limited Partnership (Tr. 5136-5137). Mrs. Molina testified that she did not prepare the document; she thought the document was prepared either by her husband or Mr. Sanchez. She was not familiar with the typeface of the typewriter used in completing the Certificate (Tr. 5032). The Certificate, filed September 20, 1984, listed Thomas Moore as AMG's agent for service. Mrs. Molina explained that Moore was named as the agent because his office was open during normal business hours. She was unable to explain why her name was listed as the agent for service in AMG's Limited Partnership Agreement which was prepared and executed approximately one year later (Tr. 5033-34). Sanchez had provided a draft limited partnership agreement to the group for review soon after AMG's application was filed. However, according to Mr. and Mrs. Molina, the draft was lengthy and difficult to understand. Mrs. Molina did not attempt to work with counsel to revise the agreement to the group's satisfaction. Instead, the draft agreement was put aside, and no effort was made to draw up a limited partnership agreement until AMG retained new counsel in June 1985 (Tr. 5027-5029; 5129-5132).

322. In the spring of 1985, Sanchez met in San Diego with AMG's limited partners to bring them up to date on the proceeding (Tr. 5143). Rosalinda Molina did not attend the meeting due to her work schedule. She testified that her husband later told her about the meeting, but she could not remember any details (Tr. 5030-5031). Rosalinda Molina never met face-to-face with either Moore or Battaglia concerning AMG until August 1985. According to Hector Molina's testimony, his wife and the limited partners did not meet earlier because Moore and Battaglia were too busy with other businesses and they did not want to get "bogged down with a lot of details and information about the process" (Tr. 5142). Yet, in addition to the meetings of the limited partners already referenced above, a meeting of the limited partners was held in late spring 1985 to discuss retaining new counsel. According to Hector Molina, his wife recommended that AMG retain other counsel and she asked him to meet with the other limited partners to discuss her recommendation (Tr. 5144-5145). Moore's testimony indicates that the desire to change counsel was a collective one. He testified that the limited partners met to discuss the prospect, and the decision was a "consensus" (EBC Ex. 9, p. 49). Hector Molina initiated contact with AMG's current counsel, Mr. Kimball. Mr. Molina testified that his wife asked him if he knew anyone who could refer them to other communications counsel. He obtained Kimball's name from a contact, and then proceeded to call Kimball (Tr. 5145). Mr. Molina testified that he, rather than his wife placed the call to Kimball, because he, rather than his wife had been given Kimball's name (Tr. 5147- 5148). Apparently after Rosalinda Molina spoke with Kimball, she made her first contact with Battaglia. She asked him to meet with Kimball during a trip he had planned to Washington, D.C. (Tr. 5075-5076, 5146). She did not give Battaglia any instructions or limitations as to his discussions with Kimball (Tr. 5076-5077). After the meeting between Messrs. Battaglia and Kimball, Battaglia reported back to the other limited partners in a face- to-face meeting (Tr. 5146).

323. AMG's Limited Partnership Agreement (Agreement or Partnership Agreement), prepared by AMG's current counsel, was executed on the eve of depositions of AMG principals in this proceeding (AMG Ex. 21C; Tr. 5132). The Agreement was amended twice during the December 1985 hearing sessions in this proceeding, just prior to the appearance of Mr. and Mrs. Molina as witnesses.[61] The Agreement provides, *inter alia*, that Rosalinda Molina may form a corporation to replace herself as sole general partner of AMG (AMG Ex. 21C, p. 7). Mrs. Molina testified that if AMG's application is granted, she will form a corporation for this purpose (Tr. 5068).

She testified that there have been no discussions regarding how the corporation will be structured. *Id.* The Agreement is silent with respect to ownership, control and structuring of the corporate general partner. AMG's Memorandum of Understanding[62], superseded by the Agreement, also contained a provision for the general partner's replacement by a corporation, but it further stated that the corporation would be owned by Mrs. Molina "in the same percentage ratios as her general partnership interest" (AMG Ex. 21B, p. 2). Hector Molina testified that he understood this provision to mean that the general partner and the limited partners, respectively, would hold the same percentages of ownership in the corporation that they hold in the limited partnership (Tr. 5161).

324. AMG's Partnership Agreement also places restrictions on the sale of the limited partners' ownership interests in AMG, but it places no similar restrictions on the sale of the general partner's interest. Neither of the Molinas was able to explain this disparity (AMG Ex. 21C; Tr. 5071-5072, 5155-5156).

325. Rosalinda Molina is not required to provide any contributions other than services to AMG in return for her 1/6 ownership interest (AMG Ex. 21C, pp. 4, 6-7). She testified that while she has not incurred any out-of- pocket expenses on behalf of AMG, her husband has incurred out-of-pocket expenses on the order of200 for express mailings to counsel. Mr. Molina testified that he intends to seek reimbursement for his out-of-pocket expenses which he estimated to be500 for express mailings (Tr. 5043, 5064-5065, 5127- 5128).

326. As to Mr. Molina's financial obligation to the partnership, the record shows that it was not accurately reflected in AMG's governing document until December 1985 (Tr. 5143). The Partnership Agreement, as originally executed, provided that the three limited partners were to be responsible for all prosecution costs in the following percentages: 20% for Hector Molina and 40% each for Thomas Moore and Mark Battaglia (AMG Ex. 21C, p. 4). This provision was consistent with the terms of the Memorandum which had governed AMG for more than one year (AMG Ex. 21B, p. 2). However, according to the Molinas, they understood from the beginning that Hector Molina would not be responsible for making financial contributions to AMG (Tr. 5148-5149).

327. Mr. Molina testified that when he took the Memorandum to Messrs. Moore and Battaglia for their signature on July 26, 1984, he informed them that he could not make the financial contribution which the Memorandum now required of him. (When Hector Molina had previously been proposed to serve as general partner, he was to have received a 1/3 ownership interest with no obligation to make financial contributions to the partnership (Tr. 5148-5149). Indeed, Mr. Molina testified that when he received the revised Memorandum from Sanchez, he was surprised to see that the document reflected that he was still a principal of AMG and that he was to receive a 1/6 interest; he had expected his wife to totally replace him and take his 1/3 interest. He testified that when he went to Messrs. Moore and Battaglia with the Memorandum, they orally agreed to give him a 1/6 ownership interest in consideration for bringing the application opportunity to them. Mr. Molina further testified that Messrs. Moore and Battaglia also agreed to provide all funding to AMG, and hold Mr. Molina responsible for a percentage of the funds only if AMG's application were granted, in which case they would lend Mr. Molina funds necessary to cover his percentage of the costs (Tr. 5123-5125, 5152-5154). Mr. Molina testified that the terms of the Memorandum were not amended to reflect this oral understanding because "we felt that it was a legal document that if we -- made any changes . . . we would get into difficulties with our lawyer in Washington" (Tr. 5124). He never asked Sanchez to draw up an amendment to the Memorandum to reflect their oral understanding (Tr. 5128-5129). Rosalinda Molina couild not explain why the Memorandum was inaccurate on this point (Tr. 5066-5067).

328. As previously indicated, the Partnership Agreement, executed in September 1985, also inaccurately reflected, Mr. Molina's financial commitment. This agreement was reviewed with counsel just before the depositions, and according to Mr. Molina, no one questioned any of the provisions (Tr. 5156). Yet, on December 13, 1985, prior to the Molinas' appearance as witnesses in the hearing, the Agreement was amended to reflect that Messrs. Moore and Battaglia would loan Mr. Molina the funds to meet his additional capital contributions to the partnership (AMG Ex. 21D). Five days later, on December 18, 1985, the AMG principals executed a Second Amendment to the Agreement, relieving Mr. Molina of all obligations to make loans or further contributions beyond an initial contribution of500 unless and until AMG's application is granted (AMG Ex. 21E). No loan agreements or promissory notes have been executed by the limited partners, nor have all the terms for Mr. Molina's repayment of such loans been determined (Tr. 5125-5126).

329. The record reflects similar disparities between AMG's governing document and the understandings of the principals regarding the extent of the financial obligations of Messrs. Moore and Battaglia. The Memorandum of Understanding expressly stated that the limited partners were to fund the prosecution of the application *until* issuance of the construction permit (AMG Ex. 21B, p. 2). The superseding Limited Partnership Agreement stated:

> The Limited Partners shall contribute to the Partnership the costs incurred by the Partnership in prosecuting the application for a construction permit from the [FCC] for the operation of the FM station to be located in San Diego, California, including all legal, engineering and other necessary professional fees and other costs up to the date of the actual issuance of such construction permit.

(AMG Ex. 21C, p. 4).

330. Each of AMG's governing documents was prepared by experienced counsel who presumably was informed of the details of AMG's financial arrangements. Yet, according to Mr. Molina, Messrs. Moore and Battaglia did orally commit themselves to funding the construction and operation of the station. He testified that the reason their commitment was not reflecting in writing was due to a collective misunderstanding among AMG principals of the term, "construction permit." They thought a construction permit was issued after the station was constructed and ready to go on the air. and therefore construction and operation costs were included in the funding commitments set forth in the Memorandum and Agreement (Tr. 5121). Despite thirteen years of employment at broadcast stations, Hector Molina testified that he "didn't have a definite understanding of all of the terminology[,] that this construction permit meant that it was in different stages."

(Tr. 5122). Mr. Molina testified that they became aware of their misunderstanding regarding the financing provisions of their documents during the course of their depositions in September 1985 (Tr. 5133-5134). Yet the following deposition testimony of Mr. Moore appears to indicate that he was not operating under a similar misunderstanding:

> Q. Is there any provision in this [Limited Partnership] Agreement, to your knowledge, which deals with the contributions to be made by the limited partners as to the cost to conduct [sic] and operate the station if you get the construction permit?
>
> A. I don't believe so.

The Amendment to AMG's Limited Partnership Agreement adopted on December 13, 1985 provided for the first time in writing, that AMG's limited partners would finance the costs of construction and operation of the station (Tr. 5135- 5136).

Integration

331. Rosalinda I. Molina proposes to be employed full-time (at least 40 hours per week) as the general manager of the San Diego station. Mrs. Molina is currently employed as a Senior Loan Administrator at Wells Fargo Bank, San Diego, and will terminate her employment in the event AMG's application is granted (AMG Ex. 2, pp. 1, 3, 4).

332. Rosalinda Molina is an Hispanic American citizen whose parents were born in Mexico. She has resided in San Diego since March, 1978 (AMG Ex. 2, p. 1). Since 1980, Mrs. Molina has been a member of the Hispanic Committee of Mira Mesa which raises funds to provide scholarships to outstanding Hispanic students at Mira Mesa High School. She estimates that she has attended 75% of the Committee's monthly meetings. Also since 1980, Mrs. Molina has also been a member of the Good Shepard Church for which she has coordinated fund raising event for the construction of a new church building. In 1985, Mrs. Molina became involved in the School of Wonder, a preschool program attended by her daughter, and has been involved in efforts to form a parent's organization. She supports local Hispanic organizations in San Diego by participating and attending fund-raising events sponsored by the Latino Police Officer Association, the Mexican American Foundation, Chicano Federation, the San Diego Catholic Diocese, and the Chicano News Media Association. However, during the year prior to her appearance as a witness in this proceeding, Mrs. Molina neither attended nor otherwise participated in any activities sponsored by the Mexican American Foundation, the Chicano Federation or the Chicano News Media Association, and she attended only two events sponsored by the Latino Police Officers Association (Tr. 5040-5042; AMG Ex. 2, p. 5).

333. Rosalina Molina was employed part-time at noncommercial educational Station KBBF-FM, Santa Rosa, California from June 1973 to June 1976. She was an on-air personality, as well as an assistant in the production of programs, public service announcements, recordings and segments of educational programs. She also acted as a news announcer upon request, record librarian and traffic clerk. In addition, she assisted in the station's fund-raising events. From June 1976 to January 1977, Ms. Molina worked full-time at Station KBBF-FM, as the administrative assistant to the station manager, Hector Molina, to whom she is married. She performed secretarial duties, handled bookkeeping and payroll, assisted in fundraising drives and supervised high school students who worked at the station part- time. She had no managerial duties with respect to full-time station employees. When funding for her position run out in January 1977, she volunteered at the station once a week, working on program production. Her volunteer work at KBBF-FM continued until June 1977 (Tr. 5089-5090; AMG Ex. 2, pp. 1-3).

Diversification

334. None of the principals of AMG has ownership interests in any media of mass communications (AMG Ex. 1). However, the *HDO* placed the following media divestiture condition on the grant of AMG's application: Prior to program test authority, Rosalinda Molina must divest herself of all interest in a Wells Fargo Bank employee investment stock fund which has interests in various mass media entities. *HDO* at paragraph 91. Hector Molina is employed as a program producer at noncommercial educational Station KPBS- FM, San Diego, a position he has held since 1977. He produces two programs, one which airs locally and one which airs nationally over the national public radio system (Tr. 5106-5107).

Auxiliary Power

335. AMG proposes to install an auxiliary generator for use in the event of emergency (AMG Ex. 3).

SAN YSIDRO COMMUNICATIONS (SYC)

Background

336. San Ysidro Communications (SYC) is organized as a California limited partnership with the single general partner and five limited partners identified below:

Name	Nature of Interest	Equity
Pura Marquez	General Partner	20%
Alex Scheingross	Limited Partner	16%
Ulisses Silva	Limited Partner	14%
Alberto Garcia	Limited Partner	25%
Alberto Garcia, Jr.	Limited Partner	23%
Elizer Gomez	Limited Partner	2%

337. All of the partners in SYC also are voting shareholders of San Ysidro Broadcasting Corp. (SYBC), an applicant to construct an LPTV station in San Ysidro, California, just south of San Diego (Henry Ex. 6; Tr. 5326, 5353). [63] Messrs. Scheingross and Garcia are the largest shareholders therein, each holding a 22.67% interest therein; Ms. Marquez has a 2.3% interest therein (Tr. 5352-5353). Messrs. Scheingross and Garcia first heard that an FM channel in San Diego would be available, and arranged for the other SYBC shareholders to meet with them to discuss applying for it (Tr. 5326). Scheingross recommended that a limited partnership be formed and that Ms. Marquez be its general partner (Tr. 5328, 5330). Nevertheless, she did not hire either the communications attorney or the engineer for the applicant, and she followed Scheingross's recommendation in later changing communications counsel (Tr. 5327, 5419). Indeed, Ms.

Marquez consulted with a limited partner, Garcia, before she even hired a bookkeeper for the partnership (Tr. 5389). Scheingross also was the one later to determine that the partnership required additional funding and to call for contributions by the other partners (Tr. 5384).

338. SYC held two meetings prior to filing the application. Two additional meetings were held after the application was filed. Limited partners attended these meetings and fully participated in the transaction of business, without limitation (Tr. 5367-5368, 5373-5374). In this connection, all the partners agreed on the program format (Tr. 5365-5366).

339. Scheingross assembled the information necessary for the application to be submitted to the Commission by SYC and then completed the application form himself (Tr. 5327, 5357-5360, 5541). He was the first to confer with communications counsel, and has continued to confer with such counsel and to receive copies of correspondence from counsel (Tr. 5328, 5416- 5417, 5510). He also was the one to tell Ms. Marquez that she had to prepare an Integration Statement for submission to the Commission at the commencement of the hearing proceedings and advised her what duties should be described therein (Tr,. 5420).[64] Subsequently, he was responsible for assembling the partnership records which had to be produced pursuant to discovery (Tr. 5418- 5419). These services purportedly have been performed by Scheingross as SYC's local counsel, but he never has kept a record of the time he has spent on SYC's affairs, has never billed SYC for his service, and has never been paid for such services (T. 5378-5380, 5397, 5424-5425, 5510).

340. Under the limited partnership agreement, drafted by Scheingross, the general partner may be removed at will, by vote of the majority of the partners, at which time her interest would become limited. Ms. Marquez has no employment agreement.[65] Similarly she has no obligation to remain as general partner (SYC Ex. 5 - Sections 1.10, 9.1, 10.1; Tr. 5381, 5382, 5459, 5461, 5462, 5476, 5482, 5516, 5517, 5510, 5555).

Integration

341. Pura Marquez claims that she will work full-time as general manager of the proposed station. She is now employed by Monfort World Travel, which has three offices in the San Diego area, and she owns Viajes Monfort, Tiajuana, Mexico. The former company takes 5 to 10 hours per week of her time and the latter 30. She is also a part owner of Video Games, Tiajuana (Tr. 5339, 5340, 5344). Ms. Marquez travels extensively in connection with her travel business (Tr. 5339).[66] Ms. Marquez does not intend to relinquish her business interest. She asserts that it is not necessary to devote the hours she currently spends and that approximately two hours a week would be sufficient to supervise her business affairs (Tr. 5339-5340). Under Section 4.3 of the Limited Partnership agreement the general partner is not obligated to devote full-time to the partnership business. She is required to devote "a reasonable amount of time as necessary" to manage the partnership business. Under this provision, Ms. Marquez is not required to devote 40 hours a week to the partnership business (Tr. 5342-5343). Section 4.3 specifically provides that Ms. Marquez "may become involved in other businesses and occupations and other partnerships" (SYC Ex. 5). Ms. Marquez intends to hire a professional to manage and run the station on a day-to-day basis (Tr. 5391, 5393). Ms. Marquez has no broadcast experience (Tr. 5393).

342. Ms. Marquez, as Hispanic female, has resided within SYC's proposed service area since 1974 (SYC Ex. 2, p. 1).[67] During this period, she has been a member of the United California Mexican American Association, for which she helped plan and conduct annual dinner-dances between 1979 and 1983, and the International Chamber of Commerce, for which she helped coordinate a banquet in 1983 (SYC Ex. 2, pp. 3-4). She also has been a member of the National Federation of Hispanic Republicans (to which she devoted between 2 and 15 hours per week for a 12 week period in 1982 as chairperson of its "National Hispanic Heritage Week", and a little over 1 hour per week as co-chairperson of its Speakers Series in (1982-1983) and of the Spanish Speaking Political Association (spending 15 hours per month during a 1983 political campaign) (*Id.*). Ms. Marquez owns and is employed by travel agencies on either side of the U.S.-Mexican border south of San Diego, and her companies have paid her dues to each of the foregoing organizations (SYC Ex. 2, pp. 1-2; Tr. 5394-5395).[68]

Diversification

343. Neither Pura Marquez, the General Partner, nor any of the five Limited Partners, have any interest or connection with any other mass media of communications. Pura Marquez, Elizer Gomez, Alberto Garcia, Jr., Alberto Garcia, Alex Scheingross and Ulisses Silva are principals in Say Ysidro Broadcasting Co., a California corporation, which has applied to the Federal Communications Commission for a construction permit for a new low power television station on Channel 23 in San Diego, California. The application is currenting pending. If the construction permit is granted to SYC, the parties to the San Ysidro Broadcasting Company application (LPTV) who are participants in the SYC (FM) application will divest their interest in San Ysidro Broadcasting Company (SYC Ex. 3).

Auxiliary Power

344. SYC proposes auxiliary power at its studio and transmitter site (SYC Ex. 4).

HG COMMUNICATIONS (HG)

Background

345. HG Communications (HG) purportly is a limited partnership owned by Dianne Hampton and Phyllis Greene, who each are 49% general partners and 1% limited partnrs (HG Ex. 1, p. 1). The reported corporate address of HG is 6622 Tiffin Avenue, San Diego, California 92114, which is the residence address of Dianne Hampton (*Id.* and Tr. 5655).

346. While the California limited partnership is duly registered with the Secretary of the State of California (Tr. 5688), no limited partnership agreement exists. The only document executed by HG is a "Certificate of Limited Partnership, Form LP-1" which was submitted to the state on two different occasions because the form was completed incorrectly the first time (Tr. 5688 and 5825). The first Certificate was submitted on July 20, 1984, and was returned by the Secretary of State on July 26, 1984, with a letter citing specific problems with the form (Tr. 5695 and Bradley Ex. 6, p. 3). Subsequently, after HG filed its application with the FCC, corrections were made and the

Certificate was again filed on August 6, 1984, and accepted by the Secretary of the State of California (Tr. 5698 and HG Ex. 6).[69] This two page certificate is not a partnership agreement but rather a state required registration statement containing certain information as to the purported partnership.

347. The confused situation is further compounded by a prior general partnership agreement which Hampton and Green have signed. Prior to the filing of the Certificate, Hampton and Greene had on April 12, 1984, signed a form "Partnership Agreement" (Tr. 5701 and HG Ex. 7) forming a general partnership known as Hampton and Greene Broadcasting (HGB) (Tr. 5706- 07).

348. Ms. Hampton and Ms. Greene cannot agree regarding the legal effect of the initial Partnership Agreement. According to Ms. Hampton, it was a "preliminary agreement" to the purported limited partnership arrangement, the two were "one in the same document," and the initial Partnership Agreement was "more or less a rough draft" (Tr. 5703-05). Although the Partnership Agreement was never rescinded either by written document or orally, Ms. Hampton believes that the Partnership Agreement is not operative at this time (Tr. 5708). Furthermore, according to Ms. Hampton, it was the intention of Greene and Hampton from the beginning to function as a limited partnership, and they thought the initial April Partnership Agreement accomplished that intent (Tr. 5748). However, in the second state Certificate, she had certified that neither partner was doing business as a limited partner prior to July 1, 1984 (Tr. 5748-49).

349. Ms. Greene, however, views the initial April Partnership Agreement as still having force and effect, *i. e.*, as defining the legal rights and obligations of the HG partners at this time and providing important background information (Tr. 5829-30). Ms. Greene testified that the original intent of HG was to be a general partnership as of April 12, 1984, rather than a limited partnership (Tr. 5830). Her view is that HG's intent to become a limited partnership occurred at the time (July 20, 1984) the first limited partnership certificate form was completed (Tr. 5830-31).

350. Whatever the case, the actual partnership understandings between Hampton and Greene are very unclear. This is due both to the confused documentary situation and the absence of an express limited partnership agreement.[70] Neither Ms. Hampton or Ms. Greene could specify the difference between their initial general partnership and subsequent limited partnership interests (Tr. 5711-12). The only document setting forth the parameters of the purported limited partnership arrangement (HG Ex. 6, p. 3) contains no information regarding limited partners' ability to vote or setting forth other rights or duties (Tr. 5712-13). Ms. Greene, who is an attorney, drafted both the April Partnership Agreement and the subsequent State Certificates(Tr. 5749, 5770, 5810-11). However, Ms. Greene could not specify any difference between the documents and did not know whether a limited partner would be entitled to a vote (Tr. 5816-17).

351. The sole document reporting the HG partners' rights (the second page of State Certificate) was not included in the initial Certificate filing, but rather was added when the Certificate was refiled (Tr. 5828 and HG Ex. 6, 3). The agreement was dated July 20, 1984, but was drafted sometime after that date and refiled with the state on August 6 (Tr. 5828 and HG Ex. 6, p. 3). Therefore, at the time HG's application dated July 27 (representating that HG was a limited partnership) was filed with the FCC, it appears that only the initial April Partnership Agreement establishing a general partnership existed (Tr. 5828-29 and HG Ex. 6, p. 2).

352. The reasons for changing HG from a general partnership to a limited partnership are also unclear (Tr. 5713). One reason offered by Ms. Hampton was that a general partnership is a "very limiting" way of doing business and that a limited partnership would offer more flexibility (Tr. 5713-15). According to Ms. Hampton, one specific reasoin for changing to a limited partnership was to allow HG to subsequently bring in a limited partner, but Ms. Hampton had no idea how that would be done (Tr. 5739-40). According to Ms. Greene, she and Ms. Hampton were thinking at some point in time of selling the 2% limited partnership interests (Tr. 5815-16). They thought that 2% realistically would entice someone to become involved in the partnership (Tr. 5832-33).

353. According to HG's State Certificate, "any differences arising as to the ordinary matters connected with the partnership business shall be decided by a numerical majority of the partners" (HG Ex. 6, p. 3). Because both Ms. Hampton and Ms. Greene each hold 50% of the limited partnership, any disagreement would result in an impasse (Tr. 5772 and 5823). Neither Ms. Hampton or Ms. Greene could explain the implications of this provision; however, such an impasse may result in dissolution of the partnership, as the partnership agreement does not provide any mechanism for resolution (Tr. 5772 and 5823-24).

354. Although the State Certificate reports that equal contributions will be made by both Hampton and Greene, to date there has been no formal accounting regarding their contributions, and no accounting mechanism exists. The partnership does not maintain books of account other than retaining some records of bills and receipts (Tr. 5715). The partnership bills have been paid primarily from the personal account of Hampton with personal checks, and the only bank account of the partnership is a savings account from which checks cannot be written (Tr. 5715-16). Only Hampton is authorized to draw from the savings account (Tr. 5740).

355. The payments made on behalf of the partnership are kept track of only "in a loose sense" and generally expenses are paid as they arise without any records of contribution kept (Tr. 5716). Ms. Hampton could not specify how much she had paid to date in capital contributions and expenditures but assumed that it was approximately7000 to 8000 (Tr. 5716- 17). She had no knowledge as to how much money Ms. Greene had contributed to date (Tr. 5717). Ms. Greene also could not state how mush she had contributed thus far; however, she guessed it was about7000 (Tr. 5820-21). When Ms. Greene was residing in the San Diego area, Ms. Hampton sometimes sent copies of the bills she paid to Ms. Greene; however, "the priority would have been to put them (the bills) in the file as opposed to giving her (Ms. Greene) a copy (Tr. 5736).

356. Not only are the terms of the business relationship between Hampton and Greene unclear, but it appears that in fact Dianne Hampton exercises sole control over HG Communications. Ms. Hampton previously filed an application with the FCC in November of 1983, with another individual, Makeda Cheaton (Tr. 5689 and Bradley Ex. 5). This application was voluntarily dismissed because Ms. Cheaton lost interest in the project (Tr. 5690-91). Although Ms. Hampton was not specifically looking for

another partner, Ms. Hampton then met Ms. Greene, who showed interest in the project, and decided to file a new application as a new entity (Tr. 5691-92). Exhibit 2 of the Cheaton and Hampton application, which identifies specific community needs and problems as part of their EEO program, is identical to the same Exhibit included in the Hampton and Greene application (Tr. 5742-43).

357. According to the State Certificate, "the partners shall have the exclusive control over the business of the partnership and each partner shall have *equalrights in the management and conduct* of the partnership business" (HG Ex. 6. p. 3) (emphasis added). However, Ms. Hampton and Ms. Greene have an understanding that Ms. Hampton is the managing partner and in the event of any difference of opinion, it is Ms. Hampton's opinion that prevails (Tr. 5730-31). Therefore, although the State Certificate notes that a "numerical majority" of the partners' vote is required if disagreement occurs, Ms. Hampton is the person whose decision prevails (Tr. 5730). According to Ms. Hampton, in the event of such disagreement, Ms. Greene would make "a decision not to make a decision and to allow my decision to prevail (Tr. 5772). Moreover, after Ms. Greene left the San Diego area in November of 1984, Ms. Hampton exercised sole control over the prosecution of the HG application (Tr. 5724). It was both Ms. Greene's and Ms. Hampton's impression that Ms. Hampton had the full authority to prosecute HG's application, even though this was basically a legal undertaking falling within the "expertise of Ms. Greene (Tr. 5724 and 5840).

358. HG's State Certificate specifies that "any act beyond the scope of this partnership agreement *or* any contract which may subject this partnership to liability to excess of300 DOLLARS shall be subject to the prior written consent of all the general partners" (HG Ex. 6, p. 3) (emphasis added). However, Ms. Hampton has been spending amounts in excess of300 for the prosecution of the application without any written or oral consent from Ms. Greene and often without even informing Ms. Greene (Tr. 5731). Ms. Hampton interprets the agreement phrase to mean that prior written consent could be given "if we wanted to or if we didn't want to" (Tr. 5735-36). Ms. Hampton would make such expenditures from her personal funds (Tr. 5736). Ms. Hampton believes that some times she discussed such expenditures with Ms. Greene when she was in the San Diego area and sometimes gave her copies of the bills, but no such discussions occurred since Ms. Greene left the San Diego area in November of 1984 (Tr. 5736 and 5834). However, to Ms. Hampton's knowledge, Ms. Greene never made any contracts or expenditures made in excess of300 throughout the entire time of prosecution of HG's application (Tr. 5834).

359. Ms. Hampton deposited the partnership contributions of Ms. Greene in her personal account, including the1250 general partnership contribution of Ms. Greene (Tr. 5819). Ms. Greene was unaware whether she is authorized to draw on the partnership's bank saving account (Tr. 5820-21). However, according to Ms. Hampton, only she, and not Ms. Greene, is authorized to draw upon the partnership's bank savings account (Tr. 5740). Ms. Hampton alone maintains the public inspection file (Tr. 5740-41).

360. In November of 1984, Ms. Greene gave up her lease on her apartment in LaMesa, California and left that area, traveling to Michigan, Indianapolis, Louisiana and ultimately Atlanta (Tr. 5789-90). Although she informed Ms. Hampton she would be taking a "vacation," since November of 1984, she has not returned to the San Diego area (Tr. 5791). Ms. Greene did not inform Ms. Hampton how long she would be gone and did not inform her of her forwarding address (Tr. 5791-92). She testified that she thought Ms. Hampton knew she was not residing in LaMesa because she assumed that Ms. Hampton "probably tried to contact" her there (Tr. 5794-95). Ms. Greene also did not inform her counsel and did not attempt to contact her counsel prior to November of 1985 (Tr. 5804). In contrast, Ms. Hampton stated that she was unaware that Ms. Greene had moved from her apartment in LaMesa and assumed that LaMesa was still her mailing address (Tr. 5722). However, Ms. Hampton made no attempt to contact Ms. Greene during her absence, but merely assumed that Ms. Greene was being contacted by counsel, and Ms. Hampton made all the decisions about prosecution of the application on her own (Tr. 5720-24).

361. Ms. Greene did not make any plans or arrangements for the continued prosecution of the HG application prior to her departure (Tr. 5797). The sole "contact" Ms. Greene had with the San Diego area since November of 1984 was some furniture she left with friends in San Diego (Tr. 5801). However, the HG Communications application was not amended to report a new address change until November 15, 1985, over a year after Ms. Greene had left the San Diego area (Tr. 5803-04). After Ms. Greene's departure from the San Diego area, she received some mail from counsel which was sent to her San Diego address, then forwarded to her mother in Michigan, and then forwarded to her in Atlanta (Tr. 5805-06). Ms. Greene assumed that if anything were "really important" regarding the prosecution of the application Ms. Hampton would get in touch with her (Tr. 5806).

362. Ms. Greene did not participate in many important steps in the prosecution of HG's application. Although the Hearing Designation Order in this proceeding was released on May 28, 1985, Ms. Greene wa unaware that the HG application had been designated for hearing until around the first of October, 1985 (Tr. 5807). Although Ms. Greene became aware through contact with her mother that she was obligated to appear for deposition, she did not contact her counsel and did not attempt to contact Ms. Hampton regarding the deposition until two days prior to the deposition (Tr. 5807-09). She tried to call Ms. Hampton only twice and left one message on her telephone answering machine (Tr. 5809). Ms. Greene did not appear for her deposition as scheduled in October, 1985 and was not deposed until November 15, 1985, just before the hearing began (Tr. 5809).

363. Ms. Greene did not see her direct case exhibit (HG Ex. 4) until November 15, 1985, the day that she signed the exhibit and three days after its exchange with other parties (Tr. 5781-82). She did not draft the exhibit, but rather she believes it was based upon material that she and Ms. Hampton had previously put together regarding her background and was drafted by her counsel (Tr. 5782-83). She made no changes in the exhibit before signing it, although the background material was prepared sometime in the summer of 1984 (Tr. 5782-83). Nor did Ms. Greene participate in production of documents phase of the proceeding or review her files pursuant to the production order (Tr. 5813). Ms. Hampton did not even attempt to contact Ms. Greene regarding the production of

documents because she was "fairly sure in my mind that she [Ms. Greene] didn't have any" documents (Tr. 5719-20).

Integration

364. HG proposes a 100 percent (100%) integration of ownership and full-time local management for KIFM-FM (HG Ex. 3). Only Ms. Hampton and Ms. Greene are empowered to make decisions on behalf of HG that affect its application and the day-to-day operation of the proposed station (HG Ex. 6).

365. Dianne Hampton, a Black woman (HG Ex. 3, p. 1), currently resides in San Diego (Tr. 5655). She has been a resident of the San Diego area since 1976 (HG Ex. 3, p. 2). She proposes serving as General Manager of the station full-time and would be responsible for management, administrative and budgetary decisions at the station (HG Ex. 3, p. 1).

366. Ms. Hampton has limited broadcast experience. In 1976, Ms. Hampton held a position as Religious Program Director at XEAZ-AM, a Mexican broadcast station that broadcasts in English to the San Diego area, for a short time, approximately 2 to 4 months (Tr. 5672-73). In 1980, Ms. Hampton held a part-time volunteer position as a Production Assistant for the Ethnic Programming Department of KPBS-TV in San Diego, for approximately 3 to 4 months (Tr. 5660, 5676). She spent approximately 10-15 hours per week in this volunteer activity, which consisted solely of assisting in the production of one show, the Anasa Briggs Show (Tr. 5676-5677). In 1981, Ms. Hampton had a part-time voluntary internship through San Diego State University as a Floor Director for KCOX Cable Company of San Diego for approximately 5 to 6 months (Tr. 5675-5676). In 1982, Ms. Hampton was Station Manager at XHRM-FM, another Mexican station, for one month (Tr. 5673). In 1982, Ms. Hampton had a part-time voluntary internship lasting approximately 5 to 6 months working for KGTV-TV in San Diego, as part of a special study project through San Diego State University.

367. Ms. Hampton characterized her current work as a part-time "independent radio producer, writer and media consultant" (Tr. 5657-59). These positions involve similar activities and include general public relations work (Tr. 5754, 5657-5658, 5667). Ms. Hampton believed that she began her consulting work in 1980 (Tr. 5660, 5678). It is part-time work at which she spends a varied amount of time, sometimes only 10-15 hours per week (Tr. 5658-5659). Ms. Hampton has several other sources of income, including preparing income tax returns, selling a food supplement, and general referral services with receipt of referral fees (Tr. 5659, 5661-5662, 5678-5679). She could not say whether her media consultant business was her principal source of income because that "depends on the time of the year that it is and what project that I am working on at that particular time" (Tr. 5662). Ms. Hampton does not have a professional listing in the local telephone directory for her consulting service (Tr. 5659-5660).

368. According to Ms. Hampton, media consulting was her principal source of income in 1984 and 1985 (Tr. 5662). However, in 1985, she produced only 4 to 5 commercials, in which she spent approximately 10 to 15 hours per commercial in production responsibilities, and operated a camera in videotaping some training programs (Tr. 5756, 5667). In 1984, she had only 3 to 4 projects, including production of a continuing series program for Terry Cole-Wittaker, the head of Ms. Hampton's church, and a couple of commercials for individuals (Tr. 5662-5665). In 1984, she also worked on a Spanish language program that was never broadcast over the air and produced a 5 minute program through PBS which was not aired (Tr. 5666, 5669). In 1983, Ms. Hampton worked on the Terry Cole-Wittaker program and did a few commercials (Tr. 5667-5668). In 1982, she did some commercials (Tr. 5668). Therefore, 1984 was the high point of her level of activity for media consulting work, specifically because of her involvement in the Terry Cole-Wittaker Program (Tr. 5669). Ms. Hampton did no media consultant work in the first month of 1986 (Tr. 5670).

369. Ms. Hampton has had some involvement in local civic and community activities. Ms. Hampton testified to some volunteer work for the Youth Advocate of the Citizens Policy Center, while she was employed by the Citizens Policy Center in a full-time paid position in 1979-1980 (Tr. 5679- 5680). Ms. Hampton did no volunteer work for the Youth Advocate prior to her employment or after her termination with Citizens Policy Center (Tr. 5680- 5681). While a student at San Diego State University, Ms. Hampton held a position as Manager of a facility called the Back Door, a coffee shop/club (Tr. 5682-5683). As an outgrowth of being Back Door Manager, she scheduled facilities for student affairs and sold tickets for the Black Student Union and some other college student groups (Tr. 5682-5684).

370. Ms. Hampton is involved as a parent in the Escondido Boys Club of San Diego, in which her two sons are members, although she has never held any leadership responsibilities in this club (Tr. 5684-5685, 5761). Ms. Hampton has worked with the Parent Teacher Associations (PTAs) of Lemon Grove, California and Grossmont, California since approximately 1980, when her sons entered elementary schools there (Tr. 5681). Although she has assisted with some fund raising activities and chaperoning, she attends only 4 to 6 meetings per year and has never been an officer or director in these PTAs (Tr. 5682). Ms. Hampton did not attend PTA meetings in November or December of 1985, or January, 1986 (Tr. 5760). Ms. Hampton also testified as to her work for her then church, the Terry Cole-Wittaker Ministries, of which she was a member, for approximately 2 years, from the latter part of 1982 to the latter part of 1984; however, this work appears to be intertwined with her consulting activities (Tr. 5685-5686) The only two activities in which Ms. Hampton is currently involved are the Escondido Boys Club and the PTA (Tr. 5759-5760).

371. Phyllis Greene is proposed as Program Director of the station and will devote a minimum of 40 hours per week at the station (HG Ex. 4). Ms. Greene will be responsible for selecting and coordinating music, news, public affairs and special programming at the station (HG Ex. 4).

372. Ms. Greene, a Black woman, resided in the San Diego area from July 1983 to November 1984 (HG Ex. 4). Ms. Greene currently resides in East Point, Georgia. She will move back to San Diego if HG is granted the construction permit for KIFM-FM (HG Ex. 4).

373. Ms. Greene is an attorney and registered nurse who obtained a Juris Doctor Degree from Detroit College of Law, a Bachelor of Arts Degree in Political Science from the University of Michigan and medical training from Hurley Medical Center School of Nursing (HG Ex. 4). She has worked in the legal and medical professions since

1969. While in Georgia Ms. Greene is partner and Business Manager of Exotic Motorcars of Atlanta (Tr. 5798, HG Ex. 4).

374. Ms. Greene has no broadcast experience. As for civic activities in San Diego during her brief residence in San Diego, Ms. Greene testified as to two or three meetings with the president of an organization called Black Health Executives; however, she never joined the organization, nor did she ever participate in the activities or events of the organization (Tr. 5837- 5838). As a member of the Terry Cole-Wittaker Ministries, Ms. Greene worked as a volunteer in some church activities for approximately three months, from March through May of 1984, when she was unemployed. Her participation ended when she became employed (Tr. 5838-5839).

Diversification

375. Neither Ms. Hampton nor Ms. Greene have an ownership interest in or an attributable connection with any broadcast station or with any other media of mass communications (HG Ex. 2).

Auxiliary Power

376. Auxiliary transmitter and power source equipment will be installed to maintain service in emergency situations (HG Ex. 5).

COLOM COMMUNICATIONS CORPORATION (CCC)

Background

377. Colom Communications Corporation (CCC), is a corporation comprised of three shareholders: Milton Colom, Roland Colom, and Wilbur Colom (CCC Ex. 1A, p. 1).

Integration

378. None of the shareholders, each of whom owns a 33.33 percent interest, proposes to participate in the day-to-day management of the station. *Id.*

Diversification

379. Colom Communications Corporation (CCC) and one of its three principals, Wilbur Colom, have extensive media interests in addition to the current application. Wilbur Colom is a 33.33 percent shareholder of the application and serves as its secretary, treasurer, and director (CCC Ex. 1A, 1).

380. CCC is the permittee of commercial FM broadcast station WZIX(FM) in Artesia, Mississippi. Petition for Leave To Amend filed February 25, 1986; *Order*, FCC 86M-948, released March 13, 1986. CCC also owns a 45 percent stock interest in Albany Broadcasters, Inc. (ABI), which is the permittee of commercial television broadcast station in Albany, Georgia, for which the call letters WOCT(TV) have been requested. *Id.* Wilbur Colom is president and director of ABI. *Id.*

381. Wilbur Colom has an interest in the following partnerships and corporations which hold construction permits for two commercial television stations:

General partner and 45-percent equity owner of Lubbock TV 16 Broadcasting, the permittee of a new UHF station in Lubbock, Texas. (See FCC File No. BPCT-840802KJ.)

President, director, and 45 percent shareholder of Mobile TV 61, Inc., which is the permittee of a new commercial television station in Mobile, Alabama. (See FCC File No. BPCT-840530KI.)

Petition for Leave To Amend, filed February 25, 1986, as supplemented by FCC records; *Order*, FCC 86M-948, released March 13, 1986).

SAN DIEGO COMTRENDS, INC. (COMTRENDS)

Background

382. San Diego ComTrends, Inc. (ComTrends) is a corporation duly formed under the laws of the State of California (ComTrends Ex. 1, p. 1). The officers and stockholders of ComTrends are Rosalia A. Salinas, owner of a 41 percent interest; Roger A. Cazares, President and owner of a 24 percent interests; Richard R. Castillo, Secretary and owner of a 15 percent interest; Tomas V. Carlos, Treasurer and owner of a ten percent interest; and Maria L. Martinez, owner of a ten percent interest. All five of the shareholders are on the Board of Directors (ComTrends Ex. 1, p. 2).

Integration

383. All five of the ComTrends principals are proposed to be integrated into the management of the proposed station. Ms. Salinas will act as General Manager and Ms. Martinez will serve as Program Manager, while Messrs. Carlos, Cazares and Castillo will fill the positions of Sales Manager, Public Affairs Director and Personnel Director, respectively (ComTrends Ex. 2, 2).

384. Rosalia Salinas is the General Manager of the ComTrends station. In this capacity, she will devote a minimum of forty hour per week to the day-to-day management of the station. As General Manager, Ms. Salinas will perform the customary and usual duties of a general manager, including the exercise of primary responsibility for executing policies and determinations made by the Board of Directors; planning and carrying out the organizational structure of the enterprise; recruiting and hiring key management personnel in all areas of station operation; supervising the execution of duties by management personnel and their staffs; and advising, consulting with, and directing, where necessary, the staff of each organizational component, such as programming, sales, engineering and administration (ComTrends Ex. 3, pp. 1-2).

385. Ms. Salinas, an Hispanic female, has resided in San Diego since August 1971. She is a graduate of the University of Texas and holds a Masters Degree in Education from San Diego State University. In addition to doing post-graduate work towards a doctoral degree from Northern Arizona University, she has taken a course through the Center for Leadership Development that addressed Management Strategies, a course entitled "Pre-Business Workshop, and, through the University of California at Los Angeles extension, a course entitled "Radio Station Ownership and Management" (ComTrends Ex. 3, pp. 2-3). Ms. Salinas holds the position of Curriculum Coordinator,

Bilingual Education. Foreign Languages, San Diego County. She will terminate this position if the ComTrends application is granted (ComTrends Ex., 3, p. 6).

386. In 1983, Ms. Salinas served as Vice President of the Chicano Democratic Association and is presently serving in the capacity of President. The Association is a chartered club under the auspices of the Democratic Central Committee. Its membership is composed of residents of San Diego County interested in promoting issues and candidates that address the needs of the Hispanic community. Ms. Salinas spends between four and ten hours per month performing duties for the Association (ComTrends Ex. 3, p. 3; Tr. 6216).

387. From 1981 to 1983, Ms. Salinas was a member of the Mexican and American Foundation. During that time, the Foundation presented her with the "Dama de Distinction" (woman of distinction) award. Ms. Salinas is presently a member of the Board of the National Conference of Christians and Jews in San Diego County and has been placed on that organization's Honor Roll. In 1978, Ms. Salinas served on the Board for the San Diego YWCA and was involved in fund raising efforts for the establishment of San Diego's Battered Women's Center. In 1977, Ms. Salinas served on the United Way Review Board for San Diego County. Her duties included the review of several community agencies in order to make recommendations as to funding (ComTrends Ex. 3, pp. 3-4).

388. Since May 1985, Ms. Salinas has been a member of the Mayor's Hispanic Council for the City of San Diego. Since 1984, Ms. Salinas has served on the Minority Affairs Council to a San Diego County Supervisor. Her work on the Minority Affairs Council includes service on the committee that reviews the County's budget and makes recommendations to the Board of Supervisors. Since 1983, Ms. Salinas has served as a member of the Board of Overseers of the University of California, San Diego. The Board acts in an advisory capacity to the Chancellor of the University. Ms. Salinas devotes at least 20 hours per year to the Board. During 1984 and 1985, Ms. Salinas served on the Hispanic Affairs Advisory Committee to Congressman Jim Bates (ComTrends Ex. 3, pp. 3-5; Tr. 6213).

389. Since 1983, Ms. Salinas has been a member of the Mexican American Advisory Committee to the Superintendent of the San Diego City Schools. The committee is composed of business and community leaders and has addressed such topics as personnel, gifted and talented students, and dropouts. Since 1982, Ms. Salinas has served as an advisory board member to the Bilingual Instructional Technology Program at San Diego State University. Her duties, which can require a commitment of two to three hour per month, include reviewing projects proposed by students and promotion of the program within the San Diego community. Since 1980, Ms. Salinas has been a member of the National Association for Bilingual Education and, since 1979, she has been a member of the California for Bilingual Education. She has served as President of the San Diego chapter of the California Association for Bilingual Education and has been conference chair for three years. In 1978, Ms. Salinas was a member of the Association of California School Administration and served on that body's Equal Opportunity Committee (ComTrends Ex. 3, pp. 3-5; Tr. 6215).

390. Maria Martinez is proposed to be the Program Director of ComTrends' station. As Program Director, she will devote at least forty hours per week to the day-to-day management of the station and will be responsible for the development and selection of programming. She will supervise all non- managerial employees within her area of responsibility (ComTrends Ex. 5, p. 1).

391. Ms. Martinez, an Hispanic female, has resided in San Diego since 1971. She holds a Bachelor's Degree in communications/visual arts. Since 1983, Ms. Martinez has been an officer of the San Diego Chicano News Media Association. This organization is sponsored by the Los Angeles Chicano News Media Association, and has as its purpose the providing of assistance to minority journalists and students. She is also an active member of the University of California, San Diego Alumni Association (ComTrends Ex. 5, p. 2).

392. From September 1981 to August 1982, Ms. Martinez was employed by KGTV, Channel 10, San Diego, as an intern. In this position, she received first-hand experience and training in television and media journalism and news reporting. From January 1982 to April 1982, Ms. Martinez was employed by KCNN/KGB radio, San Diego, as a feature and news writer for the morning show. From April 1983 to the present, Ms. Martinez has been employed by KSDO Radio, San Diego, as a news reporter, weekend editor, and anchor. She will terminate this employment if the ComTrends' application is granted (ComTrends Ex. 5, p. 4).

393. Roger Cazares is the proposed Public Affairs Director of the ComTrends station. In this capacity, he will be active in the day-to-day operation and management of the station for a minimum of forty hours per week. He will perform the customary and usual duties of a Public Affairs Director, including working with the Program Director in coordinating public service announcements and setting up guest speakers and public affairs, civic affairs and news magazine programs (ComTrends Ex. 2, p. 1; Tr. 6111).

394. With the exception of two years (1960-1962), when he served in the United States Army, Cazares has resided in San Diego since 1944. Cazares, an Hispanic male, attended and received all his educational instruction from San Diego schools. From November 1975 to the present, Cazares has been the Executive Director of the Metropolitan Area Advisory Committee (MAAC) Project. As the chief executive officer of the MAAC Project, Cazares is responsible for the painting, organization, and administration of a variety of specialized projects and community improvement programs in conjunction with public and private businesses. Cazares will terminate his position with the MAAC Project in the event that the ComTrends' application is granted (ComTrends Ex. 2, p. 8).

395. Since June, 1983, Cazares has been a member, and the elected Secretary, of the San Diego Mayor's Hispanic Advisory Committee. The purpose and function of the committee is to advise the Mayor on Hispanic affairs, increase Hispanic participation and presence on priority boards and commissions (such as the Port Authority, the Stadium Authority, and development corporations), and develop Hispanic opportunities for participation in priority issues, contracts, economic development of neighborhoods, employment opportunity and issue development and resolution vis-a-vis the City of San Diego. The committee meets monthly. Cazares spends three to four hours per month in fulfilling his duties on the committee (ComTrends Ex. 2, p. 2; Tr. 6012, 6017).

396. Since January, 1980, Cazares has been a member and Chairman of the San Diego Job Corps Community Advisory Board. The purpose of the Board, which is made up of community leaders and business people, is to advise

the Executive Director of a 600 member residential program on activities, policies, and procedures, program development and community support. The Board meets every quarter. Cazares' work on the Board takes approximately two hours per quarter (ComTrends Ex. 2, p. 3; Tr. 6014, 6017).

397. Since December, 1979, Cazares has served as a member of the San Diego Justice System Advisory Group. He served as Chairman from July 1984 through June 1985. The group is mandated by State Assembly Bill 90 and includes the Chief Probation Officer, the County Sheriff, the Police Chief, the Presiding Judge of the Juvenile Court, the Chief Administrative Officer for County of San Diego, the District Attorney and community members. Its purpose is to fund public agencies or private non-profit entities to provide local alternatives to institutionalization at the California Youth Authority and state adult correctional institutions. The amount of time devoted to the Group by Cazares varies. During periods when the Group actively considers proposals for funding, Cazares may spend up to twelve hours in a single day in reviewing and evaluating the proposals (ComTrends Ex. 2, p. 3; Tr. 6019-6020).

398. Cazares served on the United Way South County District Board and was its representative to the County-Wide Planning, Allocations and Research Council (PAR) for a combined total of eight years from 1975 to 1983. Both groups meet monthly (ComTrends Ex. 2, p. 3; Tr. 6022).

399. For the last two years, Cazares has been an active member in the Mexican American Business and Professional Association and is currently its Secretary. The Association is made up of Hispanic entrepreneurs and professional and has as its purpose the promotion and enhancement of the economic, social, and political welfare of the Mexican American People. The Association meets monthly. Cazares spends approximately two hours per month on Association activities (ComTrends Ex. 2, p. 3; Tr. 6027).

400. In May and April of 1985, Cazares served on the Liaison Committee for the Superintendent Search for the Sweetwater Union High School District. The committee spent weekends and evenings reviewing applications and interviewing applicants for the position of Superintendent for a school district of 24,000 full-time students. Cazares represented community interests (ComTrends Ex. 2, p. 4; Tr. 6030). From October 1979 to July 1982, Cazares served on the Areawide Committee on Transmit (ACT), a committee that received public input for the selection of the first route for the San Diego Trolley and the location of the passenger loading platforms. The Committee met at least monthly (ComTrends Ex. 2, p. 4; Tr. 6033). From June 1984 to April 1985, Cazares served on the San Diego County Charter Review Panel as the appointee of the lst District elected official. The panel, which meet monthly was responsible for drafting, and getting voter approval of, an amendment to the County charter which made significant changes in County government (ComTrends Ex. 2, p. 4; Tr. 6035). In January 1978, Cazares received recognition by Resolution No. 22 of the Joint Rules Committee of the Senate and the Assembly of the State of California for his community leadership (ComTrends Ex. 2, p. 4).

401. From 1980 to 1981, Cazares served as Vice-Chairman of Metro II, a public participation program that conducted public hearings on the directive from the U.S. Environmental Protection Agency that San Diego's sewage disposal system be improved, that its capacity be increased, and that it meet the requirements of the Clean Water Act. Metro II reviewed EPA requirements, consulted with engineers, sought public input, viewed alternate sewage plant locations and conducted public hearings. Metro II met frequently and Cazares spent numerous hours in fulfilling his responsibilities to the committee (ComTrends Ex. 2, p.4; Tr. 6037).

402. Cazares is a member of Agency Executives Association, an association of Executive Directors of agencies funded or affiliated with United Way of San Diego. The Association meets monthly for approximately one to one and a half hours (ComTrends Ex. 2, p. 5; Tr. 6048).

403. In the summer of 1981, Cazares participated with the San Diego Association of Governments on a regional economic development strategy. The ad hoc committee was made up of large and small business interests and elected officials. Its purpose was to attract new jobs through business relocation to high unemployment areas (ComTrends Ex. 2, p. 5). In March 1981, Cazares participated as a panelist in the selection of the Economic Development Director for the County of San Diego. In November 1978, Cazares participated on a panel of three who interviewed and selected the Director of Public Welfare for the County of San Diego (ComTrends Ex. 2, p. 5).

404. From June 1976 to March 1978, Cazares served on the San Diego County Advisory Committee for Adult Detention Facilities as the appointee of an elected member of the San Diego County Board of Supervisors. The committee inspected all adult detention facilities and was responsible for removing female prisoners from an overcrowded downtown jail to a new facility. The Committee met monthly and performed numerous surprise inspections (ComTrends Ex. 2, p. 5; Tr. 6052). In the Spring of 1978, Cazares was appointed by the Chula Vista City School District Board of Trustees to the Committee on Racial and Ethnic Balance (COREB). The Committee reviewed the ethnic imbalance in the District's schools and developed magnet programs to achieve an ethnic balance (ComTrends Ex. 2, p. 5; Tr. 6056).

405. Cazares was recently appointed to serve on the San Diego City School Superintendent's Mexican American Educational Advisory Committee. The committee meets every other month with the Superintendent for the purpose of providing input and direction on issues surrounding the education of the Mexican American child from kindergarten through 12th grade (ComTrends Ex. 2, 6). In March and April 1984, Cazares participated on the Superintendent Selection Committee as an appointee of an elected member of the Board of Trustees for the Chula Vista City Schools (ComTrends Ex. 2, p. 6). From February 1971 to August 1972, Cazares helped form Casa Justicia and worked on a voluntary full-time plus basis as its Assistant Coordinating Director. He implemented and directed community-based immigration services, coordinated with law enforcement institutions and the Immigration and Naturalization Service, analyzed and interpreted immigration and naturalization codes and advocated for clients (ComTrends Ex. 2, pp. 7-8).

406. Cazares has served or is serving on various other boards and special projects, including:

a. The California Urban Forestry Committee, as a representative of San Diego; the committee is responsible for developing projects for urban tree planting and the development of parks throughout the state;

b. Chairman of the Community Agencies Representing the Poor (CARP), a group of Executive Directors of community-based organizations that met monthly to plan and coordinate services to the poor in San Diego;

c. Chairman, Chula Vista City Schools Lau/Nichols Committee, which oversaw the school district's adherence to the Lau/Nichols law requiring that monolingual students be instructed in their native language;

d. Boy Scouts Advisory Committee (1985), which strives to involve more Hispanic youth in the Boy Scouts in San Diego;

e. South Bay (San Diego) Advisory Council of the American Cancer Society (since April 1985), a group of representative community leaders charged with advising and alerting the American Cancer Society of the cancer control needs of their area and with developing methods to meet those needs;

f. Advisory Committee to the Chancellor of the University of California at San Diego (1982-1984), which met with the Chancellor and department heads to advise on methods of recruiting minority students to the University, to assist in the hiring of professors and of unclassified employees, and to coordinate the needs of the University with the services of minority businesses (ComTrends Ex. 2, p. 7; Tr. 6060, 6067, 6126).

407. Tomas Carlos will be the Sales Manager of ComTrends' proposed station. In this capacity, Carlos will devote a minimum of forty hours each week to the day-to-day operation of the station. His duties will include the recruitment and hiring of a sales staff; retention of a national or regional sales representative; the development of a sales program in consultation with the general manager; the execution of sales and advertising policies and the development of recommendations to the Board of Directors concerning such policies (ComTrends Ex. 6, pp. 1-2).

408. With the exception of one year (1975-1976) Carlos, an Hispanic male, has lived in the San Diego area since 1970 (ComTrends Ex. 6, p. 2). He currently resides in Spring Valley, California, a community approximately 15 miles east of the center of San Diego and within the primary service area of the proposed station (ComTrends Ex. 6, p. 2; Tr. 6377, 6393). Carlos retired in 1977 from the U.S. Navy after more than twenty years of service. From 1977 to 1985, he was employed by Home Savings of America where he acted as a branch manager and held the position of Vice President. He is currently an associate consultant with Human Resource Management Systems (ComTrends Ex. 6, pp. 4-5).

409. Since approximately 1980, Carlos has been a member of the Board of Directors of the United Way of San Diego County, and has served on various of its committees, including the Executive Committee for approximately two (2) years and the Nominating Committees for two (2) years. He is a member of the Affirmative Action Committee and has served on the Minority Relations Task Force. He is presently on the PAR Council of United Way, which proposes the allocation of funds to various agencies, as well as the Priorities-Setting Task Force. He has just been appointed to serve on a review committee of the large agencies served by United Way (ComTrends Ex. 6, p. 4).

410. In 1985, Carlos was appointed to the Hispanic Advisory Group to the Superintendent of the San Diego City schools. This group advises Superintendent Payzant on various issues affecting city schools, and particularly issues which affect Hispanic students and the Hispanic community (ComTrends Ex. 6, p. 4). In 1983, he was appointed by the Mayor of the City of San Diego to serve on a Task Force on the Homeless. In September 1984, the Task Force report was published with the research, analysis and recommendations for implementation of solutions to the problems of the downtown homeless in San Diego. During the one-year existence of the Task Force, Carlos spent eight to ten hours per month in fulfilling his duties with the Task Force (ComTrends Ex. 6, p. 4). In 1979, Carlos was elected to the Board of Directors of the Chicano Federation of San Diego County. He served two (2) years as Treasurer for the Federation. The Chicago Federation is a non-profit organization. It participates in the delivery of services to the community through programs for families and senior citizens, assists in organizing the Hispanic community, and often acts as the spokesperson on particular issues which affect the Hispanic community. Carlos spends between four and five hours per month performing his duties for the Federation (ComTrends Ex. 6, p. 3; Tr. 6361).

411. In 1978, Carlos became a member of the Chicano Democratic Association, a San Diego Democratic Club which is sanctioned by the County Democratic Committee. His participation included serving as Vice President for one (1) year. He remains a member of this Association and spends four to five hours per month on Association activities (ComTrends Ex. 6, p. 4; Tr., 6362). In 1978, Carlos served on the board of directors of the Mexican and American Foundation, a non-profit organization which assists in promoting understanding between the Hispanic and Anglo communities, and raising funds for scholarships for youth and other charitable organizations. He served as a director for approximately two (2) years. Foundation activities required four to five hours per month of Carlos' time (ComTrends Ex. 6, p. 3; Tr. 6379).

412. In 1978, Carlos became a member of the Kiwanis Club of Coronado, California. He remained a member of the organization until 1981. Carlos spent approximately ten hours per month on Kiwanis Club activities (ComTrends Ex. 6, p. 3; Tr. 6378).

413. Richard R. Castillo is proposed as the full-time Director of Personnel at ComTrends' proposed station. As Personnel Director, Castillo will be responsible for analyzing and evaluating the existing staff at the station and attempting to determine how well they would fit into ComTrends' operation. He will also make recommendations as to whether additional staff are required or whether changes to staffing assignments need to be made. Additionally, he will review existing personnel policies and procedures and develop personnel policies and procedures for ComTrends, including employee benefit plans, and policies concerning absenteeism, vacations, leaves of absence, and disciplinary measures. Castillo will be responsible for developing an Equal Employment Opportunity program and making sure that it is followed and dissemi-

nated to all staff. Castillo will also develop the station's policy with respect to workmen's compensation. Finally, Castillo will develop an internship program whereby the licensee will contact public and private schools and colleges throughout the San Diego area and recruit students interested in a career in broadcasting. A particular emphasis will be placed on providing training to minorities and women. Castillo previously assisted in setting up an internship program with the San Diego City Attorney's Office (Tr. 6435-6438, 6479-6481)

414. Castillo was appointed director of personnel at a ComTrends organizational meeting which he did not attend (Tr. 6363, 6356-6366, 6368- 6369). Prior to the meeting, he was advised what positions the other ComTrends principals desired but did not indicate a personal preference of his own (Tr. 6426-6427). At the meeting, the other principals selected the positions they preferred (*i. e.*, general manager, sales manager, program director and public affairs director) and then decided to give Castillo the position of personnel director, advising him later that this would be his position (Tr. 6428).

415. Castillo concedes that most of his personnel functions will have been taken care of before ComTrends begins its broadcast operations (Tr. 6476). He also understands that ComTrends would be taking over an ongoing operation, with established personnel policies and procedures which he would review and modify as necessary (Tr. 6436-6437). To the extent that he would draft new job descriptions and employment forms, there would be one form for each job category which might take perhaps one-half hour to write (Tr. 6458- 6460). In addition, he may have to deal with EEO matters two or three hours per month, and periodically monitor the various employee benefit and workmen's compensation programs which the station may have (Tr. 6461, 6464-6466). Castillo further recognizes that all or part of the station's present staff may be retained were ComTrends to assume control of its operations (Tr. 6448- 6449).[71] In this regard, he will help evaluate existing personnel and, if necessary, solicit new employees, but each of the other operating department heads will be the one to interview prospective employees in his or her respective department and in conjunction with the general manager make all hiring and firing decisions (Tr. 6196, 6455-6456, 6478-6479).

416. Insofar as EEO is concerned, ComTrends already has an EEO Program (which Castillo did not draft), and such program provides that the station's general manager, not its personnel director, will have primary responsibility for implementing it (Tr. 6466-6467, 6482).[72] In this regard, Castillo has no doubt that ComTrends' other principals (all of whom are minorities and two of whom are women) in any event will affirmatively recruit and hire minority and female employees (Tr. 6467-6468). He himself will make hiring-firing decisions and will have direct supervisory responsibility over one other person, a secretary or administrative assistant in the personnel department (Tr. 6197, 6455).

417. With regard to the development of a student internship program, Castillo does not know of any schools in the area which have broadcast internship programs, (aside from San Diego State University, which operates its own educational Station KPBS-FM). Castillo has never contacted any school to determine if they are interested in establishing such program in conjunction with ComTrends (6469-6470, 6483). Further, regular station operations will be conducted by station employees and not by these interns (Tr. 6469).

418. With the exception of the years 1967 to 1969 and 1971 to 1973, Castillo, an Hispanic male, has resided in San Diego since his birth. Castillo is a 1977 graduate of Western State University College of Law. Castillo has been in the private practice of law since 1980 (ComTrends Ex. 4, pp. 1, 2-3). Castillo is a partner with another lawyer and currently spends an average of 50 hours a week in his practice. He states, in event of a grant, he would continue to practice law but would reduce his caseload significantly. Castillo asserts he would work a full work week (8 hours a day, 5 days a week) at the station and practice law during other hours. Also, the partners may bring in an associate, if necessary (Tr. 6402, 6404-6406).

419. Since 1973, Castillo has been associated with the Chicano Federation of San Diego County, Inc., a non-profit, social service agency serving San Diego's Hispanic community. In 1982, Castillo became legal counsel for the Chicano Federation, and does this on a pro-bono basis. Since 1982, he has averaged in excess of 200 hours per year of legal work for this organization (ComTrends Ex. 4, p. 3). Castillo has also served as a Voluntary Attorney for the University of California, San Diego, Student Legal Services, providing pro-bono legal consultations and representation to U.C.S.D. students. His involvement in this program commenced in 1980, and continues to the present time. To date, Castillo has provided pro-bono legal services to about 15 students, and a total of approximately 100 hours of time (ComTrends Ex. 4, p. 4). Since 1983, Castillo has been a member of the Mexican- American Business and Professional Association, San Diego, California. The membership of this organization consists of business leaders and professionals in the San Diego Hispanic Community. Its purpose is to promote and enhance the economic, social and political welfare of the Mexican-American people. Castillo spends an average of 6 hours per month with this organization (ComTrends Ex. 4, p. 4). Since April, 1985, Castillo has been on the Board of Directors of Sunburst Schools, Inc., a non-profit corporation whose purpose is to prevent child-abuse and assist victims. His activities require about 6 hours per month (ComTrends Ex. 4, p. 4).

420. In 1982, Castillo was appointed a member of the California Council on Private, Post-Secondary Educational Institutions, by then State Superintendent of Schools, Wilson Riles. He served until 1983 on this board, which required about 20 hours of his time each month (ComTrends Ex. 4, p. 5). In 1981, Castillo coordinated and developed a free Training Seminar for Spanish speaking attorneys, in conjunction with the County of San Diego, Office of Defender Services. This required a total of about 118 hours of Castillo's time, all donated free, to assist new attorneys in the representation of indigent clients, particularly those who are mono-lingual, Spanish speaking (ComTrends Ex. 4, p. 4). Castillo served as Volunteer Attorney for the San Diego County Bar Association's annual "Law Day," in 1980. This required about 12 hours of pro-bono legal work, providing legal consultations to the general public (ComTrends Ex. 4, p. 4). In 1975, Castillo was involved in the formation of the San Diego Chapter of LaRaza Lawyer's Association, a local Hispanic Bar Association. A charter member, Castillo remains an

active member of this association. In 1985, Castillo devoted approximately 20 hours to LaRaza's activities (ComTrends Ex. 4, p. 3).

Diversification

421. Neither ComTrends nor any of its principals has any ownership interest in any medium of mass communication (ComTrends Ex. 1, p. 2).

Auxiliary Power

422. ComTrends proposes to install auxiliary power generating equipment that will be suitable to maintain the operation of the station's transmitter and studio facilities (ComTrends Ex. 7, p. 1).

VISTA GRANDE BROADCASTING (VISTA GRANDE)

Background

423. Vista Grande Broadcasting (Vista Grande) is a Limited Partnership organized under the laws of the State of California. The ownership structure of Vista Grande is currently as follows:[73]

Principal	Position	Voting and Equity Interest	Initial Contribution
Mary Anita Robinson	General Partner	51% (voting) 27% (equity)	7,000
Georgina Garcia Karlsson	General Partner	49% (voting) 8% (equity	1,000
Peter Paul Hallisay	Limited Partner	35% (equity)	8,500
Charles & Eleanor Sisty	Limited Partner	4% (equity)	26,000
Gail E. and Veronica Brinkworth	Limited Partner	4% (equity)	26,000
Carolyn Enterprises	Limited Partner	22% (equity)	143,000

(Tr. 6527, 6534, 6725 and Vista Grande Ex. 1).

424. Vista Grande Limited Partner Carolyn Enterprises is California corporation. The shareholders of Carolyn Enterprises are as follows:

Principal	Equity Interest in Carolyn	Equity Interest in Vista Grande
Richard Haux	54.5%	12%
Carolyn Kaye Haux	22.7%	5%
Michael J. O'Leary	13.6%	3%
Allan Koljonen	9.1%	2%

Carolyn Enterprises shareholders Richard and Carolyn Haux are husband and wife (Vista Grande Ex. 1).

425. Vista Grande Limited Partners Charles and Eleanor Sisty are husband and wife. Limited Partners Gail and Veronica Brinkworth are husband and wife. Each couple holds its Limited Partnership interest jointly (Vista Grande Ex. 1).

426. At the time Vista Grande's application was initially filed, Ms. Robinson was the sole general partner and Peter Paul Hallisay was the only limited partner (Vista Grande Ex. 7, pp. 7, 21, 22). Ms. Robinson drafted Vista Grande's application herself (Tr. 6772). Hallisay's involvement in the application preparation was limited to answering Ms. Robinson's questions relative to information about him called for by the form, reviewing what she wrote about him, and preparing an exhibit regarding his intent to resign from his job at another local broadcast station (Tr. 6772; HG Ex. 9, pp. 33-34). With respect to the preparation of subsequent amendments, Hallisay's role has been limited to verifying any information that may pertain to him (Tr. 6785).

427. Ms. Robinson obtained a financial commitment letter from a local bank with which she had a prior business relationship; the bank letter is addressed to Ms. Robinson and does not call for limited partner commitments in the form of guarantees or security arrangements (Tr. 6760-62). Ms. Robinson also opened Vista Grande's checking account and, until Ms. Karlsson was added to the account, was the sole signatory (Tr. 6738, 6561; HG Ex. 9, p. 52). Ms. Robinson, who keeps the checkbook and maintains all other financial records for the partnership, estimated that by the time she testified, she had written 22 checks on behalf of the partnership; Ms. Karlsson has also signed checks (Tr. 6738, 6561; HG Ex. 8, p. 35; HG Ex. 9, 52). The partnership agreement requires that checks shall be signed by two general partners (Vista Grande Ex. 7, p. 7).

428. Ms. Robinson retained Vista Grande's consulting engineer and hired an accountant, who had previously worked for her, to help Vista Grande (Tr. 6767-6768; HG Ex. 9, p. 35-36). In early July 1984, before the partnership was formed, Ms. Robinson and Hallisay both asked Hallisay's brother, who lives in Washington, D.C., to make recommendations regarding FCC counsel (Tr. 6710-6711; HG Ex. 9, p. 35). Both Ms. Robinson and Hallisay met with FCC counsel in San Diego and decided to retain them to advise on formation of the applicant and preparation of an application (Tr. 6711; HG Ex. 9, p. 35). At the same early stage, Ms. Robinson and Hallisay also decided to hire Ms. Robinson's husband, Russ, who is a California attorney, to draft the partnership agreement and serve as local counsel (Tr. 6712-6713). Hallisay has not consulted with FCC counsel since the applicant was first established and has not participated in conference calls with FCC counsel since that early pre-filing stage (Tr. 6607).

429. As of the B cut-off date, Vista Grande had added Georgina Garcia Karlsson as a general partner and two couples -- the Sistys and the Brinkworths -- as limited partners (Vista Grande Ex. 9). In 1985, a corporate limited partner -- Carolyn Enterprises, Inc. -- was added (Vista Grande Ex. 11).

430. Ms. Robinson was interested in and came up with the idea of adding an additional general partner with broadcast experience (Tr. 6718; HG Ex. 9, p. 8). In trying to find such an individual, Ms. Robinson contacted individuals in the broadcast industry, including Hallisay (Tr. 6719-6720). Hallisay gave Ms. Karlsson's name to Ms. Robinson; Ms. Robinson made the decision to contact Ms. Karlsson (Tr. 6719). Hallisay played no part in investigating Ms. Karlsson's background (HG Ex. 9, p. 11). Hallisay, at the time the only other partner, did join Ms. Robinson in meeting Ms. Karlsson prior to voting on her admission to the partnership (Tr. 6719-6721). In connection with the

addition of limited partners Gail and Veronica Brinkworth and Charles and Eleanor Sisty, Hallisay's involvement was to suggest to them that they contact Ms. Robinson if they were interested (Tr. 6736) and vote on their admission as he is allowed to do under the partnership agreement (Tr. 6736-6737; HG Ex. 9, p. 16-17).

431. Richard Haux, a principal of limited partner Carolyn Enterprises, first learned of Vista Grande at a business lunch when a friend of Ms.Robinson's -- not Hallisay -- mentioned the application (Tr. 6741). Hallisay, who was also attending the lunch, suggested Haux contact Ms. Robinson if he wanted information (Tr. 6743). At the time, Hallisay and Haux were not good friends; indeed, the record facts show they had an "intense dislike" for each other (Tr. 6750, 6781). As a result, Hallisay's presence in the partnership was not at all material to Carolyn's decision to join (Tr. 6747-6748, 6750-6751). If anything, Haux derived a comfort from the participation of Ms. Karlsson, whom he already knew (Tr. 6751).

432. Since Ms. Karlsson became a general partner on the B cut-off date, the two women have continued -- by themselves -- to direct the prosecution of the application. They have met with each other ten or fifteen times to consider various application matters; the limited partners have not attended these meetings (Tr. 6600). They have had meetings with the limited partners on three occasions: two of the meetings were called to execute amendments to the limited partnership agreement, and the third was convened during discovery after upcoming general partner and limited partner depositions had been scheduled (Tr. 6754-6755, 6787). On one additional occasion, prior to the deadline for enlargement motions, the general partners met with several limited partners in order to learn what information they could provide about the over 100 San Diego residents involved as principals in the other competing applicants (HG Ex. 8, p. 22). Ms. Robinson and Ms. Karlsson, without any limited partner input, decided on the contents of Vista Grande's integration statement and formulated its response to the numerous requests for specialized programming issues filed by other parties (HG Ex. 9, 48; Tr. 6731). The two general partners alone have directed the disbursement of fund and have signed checks on behalf of the partnership (Tr. 6561). Ms. Karlsson and Ms. Robinson have also handled all post-filing contacts with FCC counsel (HG Ex. 9, p. 47).

433. Both Ms. Robinson and Ms. Karlsson, who together own thirty-five percent of the equity in the partnership, have a financial stake in the success of Vista Grande. Both general partners have made the capital contribution required by the partnership agreement. In Ms. Robinson's case, she was required to contribute2,000 plus experience and best effort services to the partnership. She voluntarily increased her monetary contribution to 7,000, which she has paid in full, to ensure prosecution of Vista Grande's application (Tr. 6726-6727; Vista Grande Ex. 7, p. 21; Vista Grande Ex. 9, p. 3). From Ms. Karlsson, the partnership agreement required an initial capital contribution of1,000 plus broadcast experience and best services brought to the partnership (Vista Grande Ex. 9, p. 3). Ms. Karlsson paid the1,000 obligation from her own personal funds (Tr. 6546). Both Ms. Robinson and Ms. Karlsson also understand that, as general partners, they are fully liable for the obligations of the partnership (Tr. 6570, 6761).

Integration

434. Mary Anita Robinson will serve as General Manager of the proposed station, devoting at least forty hours per week to her responsibilities at the station. She will be responsible for the day-to-day decisions concerning the operation of the station and will bear final responsibility for management of all aspects of the station. As General Manager, Ms. Robinson will establish and oversee implementation of station policy with regard to operating philosophy, employment, and all related matters and all matters relating to the business affairs of the proposed station, including supervising all relations with advertisers (Vista Grande Ex. 2).

435. In the event the Vista Grande application is granted, Ms. Robinson, a Hispanic female, will move to a residence within the city limits of San Diego. From 1970 to 1972, she lived in San Diego and from 1972 to the present, she has lived in El Cajon, a San Diego suburb (Vista Grande Ex. 2).

436. Ms. Robinson, who was born in 1946, attended high school in El Paso, Texas and graduated from the University of Texas at El Paso in 1968, where she received a Bachelor of Arts degree in English literature with a specialization in journalism. She was Copy Editor of the University's newspaper during her last semester before graduation. She also was employed by the University's News and Information Office as a Student Assistant writing press releases, drafting articles for the alumni magazine, and preparing audio tapes for broadcast on radio stations (Vista Grande Ex. 2).

437. From May 1968 to February 1969, Ms. Robinson worked for an El Paso advertising agency, Marcom Advertising, Inc., as an Assistant Public Relations Director. From February 1969 to November 1969, she was Sales and Public Relations Representative for the Sheraton El Paso Motor Inns. In this position, she directed the hotel's public relations efforts, including organizing its conventions and preparing and appearing on-air in some of its television advertisements. From November 1969 to May 1970, Ms. Robinson served as a Reporter for the *El Paso Herald Post*. At the same time, while working in El Paso, Ms. Robinson also edited the publication produced by the El Paso Advertising Club, of which she was a member (Vista Grande Ex. 2).

438. In August 1970, Ms. Robinson moved to the San Diego area. From October 1970 to February 1973, she worked in the classified advertising department of the Union-Tribune Publishing Company, which publishes the *San Diego Union* and the *San Diego Tribune*. In that position, Ms. Robinson worked with both local and national advertisers and also served in the department's adjustment section, which resolved disputes between advertisers and the newspaper. From 1978 to the present, Ms. Robinson has served as the Office Manager of her husband's law practice. In this capacity, she handles all financial matters for his office, prepares client bills, and maintains all office records. She also works as a Paralegal for her husband and other attorneys with whom he shares office space; as such, she drafts routine pleadings, digests depositions, maintains case files, and interviews clients. In the event of a grant of the Vista Grande application, she will terminate her current position at the law firm (Vista Grande Ex. 2).

439. Since 1975, Ms. Robinson has been a member of the Singing Hills Homeowners' Association. Since 1980, she has served as the group's Secretary- Treasurer, spending two hours a month volunteering her time. Since 1978,

Ms. Robinson has spent two hours a week in activities involving the soccer and softball programs in which her children are enrolled. The soccer seasons runs from fall to early spring; softball season from early spring to early summer. She has served as team mother every season for one team in each sport; she is currently tournament chairperson and publicity chairperson for the soccer league (Vista Grande Ex. 2).

440. From 1978 to 1981, Ms. Robinson was a member of the Anza School Parent-Teacher Association (PTA) and spent approximately one hour a month attending the group's meetings or workshops during the academic year. From 1981 to the present, Ms. Robinson has been a member of the Vista Grande School Parent-Teacher Association (PTA). Since 1984, she has been a member of the Montgomery Middle School Parent-Teacher Association (PTA). She spends approximately one hour a month attending Vista Grande and Montgomery Middle School PTA activities, meetings and workshops during the academic year (Vista Grande Ex. 2).

441. From 1970 to 1973, while her husband was a law student at the University of San Diego School of Law, Ms. Robinson was a member of the San Diego chapter of the Lawyers' Guild. She spent approximately two hours a month working with this group. From September 1972 until May 1973, when her husband was student director of the school's Indian Law Clinic, Ms. Robinson spent one hour per week as a volunteer interviewing clinic clients. From 1978 to 1981, Ms. Robinson spent approximately three hours per week assisting with *pro bono* cases that her husband handled on behalf of the American Civil Liberties Union in San Diego; Ms. Robinson conducted client interviews and performed factual research (Vista Grande Ex. 2).

442. For about three months in the Spring of 1983, Ms. Robinson spent approximately one hour per week as a volunteer worker assisting with the campaign of a candidate for a local Superior Court judgeship. For about two months during the Spring of 1984, she spent approximately five hours per week volunteering on behalf of a candidate for a local municipal judgeship. In the summer and Fall of 1984, Ms. Robinson spent approximately one hour per week doing volunteer campaign work in San Diego on behalf of the Mondale-Ferraro campaign (Vista Grande Ex. 2).

443. Georgina Garcia Karlsson will serve as Program Director of the proposed station, devoting at least forty hours per week to her responsibilities at the station. As Program Director, Ms. Karlsson will be responsible for all programming matters; she will supervise and coordinate the efforts of all employees involved in news, production, and on-air operations; and she will serve as liaison between the station and program suppliers as well as between the station and community groups interested in its programming efforts. Ms. Karlsson will report to Ms. Robinson, the station's General Manager (Vista Grande Ex. 3).

444. Since 1978, Ms. Karlsson, a Hispanic female, has resided in the San Diego area within the station's proposed service area. From February 1978 to June 1978, she lived in Chula Vista, California; from June 1978 to August 1980, she lived in San Diego; from August 1980 to September 1981, she lived in National City; from September 1981 to February 1984, she lived in San Diego; from February 1985 to March 31, 1985, she lived in Spring Valley, California, and from April 1985 to the present, she has lived in San Diego. Ms. Karlsson was married in 1983 to Péter J. Karlsson; they do not have any children (Vista Grande Ex. 3).

445. Ms. Karlsson, who was born in 1957, attended private and public schools in Tijuana, Mexico, Baja California for the first 10 years of her education. She entered the ninth grade in National City, California in 1971, and graduated from Sweetwater High School in National City, California in 1975 (Vista Grande Ex. 3).

446. In 1978, Ms. Karlsson graduated from Southwestern College in Chula Vista, California. From approximately 1978 to 1981, Ms. Karlsson was enrolled as a part-time student at San Diego City College in San Diego where she took evening courses in telecommunications. In 1982 and 1983, she was enrolled as a part-time student at San Diego Mesa College in San Diego, where she took evening courses in photography (Vista Grande Ex. 3).

447. For the past seven and one-half years, Ms. Karlsson has been employed on a full-time basis by Storer Communications, Inc., licensee of KCST-TV, Channel 39 in San Diego (Vista Grande Ex. 3). Ms. Karlsson has never been employed by a radio station (Tr. 6494). From 1978 until 1980, Ms. Karlsson worked in the station's public affairs department where she produced public service announcements, assisted in the production of public affairs programming, and handled public relations with individuals and groups active in civic affairs in the San Diego area. In 1980, she became a Television Production Technician with KCST-TV, and in 1982, she became an "EFP" or Electronic Field Production Assistant. In these positions, she served as technical floor director; she operated cameras, lighting, and videotape equipment, both in the studio and in the field; she served as an audio technician for the production of live news, field programming and commercials; and she assembled sets for commercial production, special presentations and news programs (Tr. 6492-6493; Vista Grande Ex. 3).

448. From 1984 to the present, Ms. Karlsson has held her first department or management position in a broadcast station, that of Public Affairs Director of KCST-TV (Tr. 6492). In this position, she has been developing the concepts for public affairs programs and researching the information necessary for their production; coordinating the station's ascertainment efforts; has produced and scheduled all its public announcements; and has acted as liaison between the station and all community representatives in the San Diego area along with ensuring continued good relations with the community. She will terminate her current position in the event Vista Grande's application is granted (Vista Grande Ex. 3).

449. Ms. Karlsson has been active in the San Diego chapter of the California Chicano News Media Association since June 1984. On average, she spends three hours per month attending the organization's regularly scheduled meetings and assisting the group with publicizing its activities. Since March 1984, Ms. Karlsson also has served as a member of the public relations committee of the San Diego Chapter of the Campfire Girls and Boys, spending an average of two hours a month to promote their programs and to advise the group on promotion techniques. Since March 1984, Ms. Karlsson has volunteered her time to advise the American Cancer Society about public relations matters and she spends an average of one hour per month attending Cancer Society meetings. Since November 1984, Ms. Karlsson has also helped the San Diego chapter of Mothers Against Drunk Driving (MADD) in its

fundraising campaigns by advising on promotion matters and has served as the moderator or "emcee" for one of the organization's events. On average, Ms. Karlsson estimates that she spends a half hour per month with MADD. Since October 1984, Ms. Karlsson has also been active in fundraising efforts for the San Diego chapter of Easter Seals, spending approximately thirty hours a year selling coupons for the group (Vista Grande Ex. 3).

450. From 1976 to 1977, Ms. Karlsson was a member of St. Anthony's Catholic Church in National City, California. She instructed a children's First Communion class for three hours a week, and participated in religious classes for two hours a week. For several months during this one year, she also was active in the choir, spending one hour a week with the group (Vista Grande Ex. 3).

Diversification

451. Vista Grande does not have any interest in any other pending FCC application or existing medium of mass communications (Vista Grande Ex. 1, 3). Other than their interests in Vista Grande, neither general partner Gina Karlsson nor general partner Mary Anita Robinson has any ownership interest in any existing or proposed broadcast station or other medium of mass communications. *Id.* Other than their interests in Vista Grande, none of the partnership's limited partners -- Peter Paul Hallisay, Gail and Veronica Brinkworth, Charles and Eleanor Sisty, and Carolyn Enterprises -- has any ownership interest in any existing or proposed broadcast station or other medium of mass communication. *Id.* None of the Carolyn Enterprises shareholders has an ownership interest in any existing or proposed medium of mass communications. *Id.*

452. Two of the shareholders of limited partner Carolyn Enterprises -- Richard Haux and Michael O'Leary -- own fifty percent (50%) of an advertising and promotion agency in San Diego which specializes principally in television advertising. *Id.* The agency handles only a small amount of radio advertising on behalf of its clients; approximately ten percent (10%) of the agency's business involves working with radio advertisements (Vista Grande Ex. 1, pp. 3-4). Upon grant of the Vista Grande application, the agency will not place any advertisements on the new station; this agreement, to which all the agency owners consented, was made before Carolyn Enterprises became a limited partner in Vista Grande (*Id.* ; Tr. 6775).

453. As noted in connection with integration issues, Ms. Karlsson is currently employed as Public Affairs Director for KCST-TV in San Diego, which is licensed to Storer Communications, Inc. (Vista Grande Ex. 1, p. 4). In the event the Vista Grande application is granted, Ms. Karlsson will resign from her position with KCST-TV. *Id.* Limited partner Peter Hallisay is employed as General Sales Manger of radio stations KFMB(AM) and KFMB-FM in San Diego, which are licensed to Midwest Television, Inc. *Id.* In the event the Vista Grande application is granted, Hallisay will resign from his position at KFMB(AM) and KFMB-FM. *Id.*[74]

Auxiliary Power

454. Vista Grande proposes to install auxiliary power at the new FM station (Vista Grande Ex. 4).

DIANE OSEQUERA (OSEQUERA)

Background

455. Diane Osequera (Osequera) is an individual applicant. She has no plans to form a corporation or limited partnership entity and has never discussed possible ownership participation in the station by others (Osequera Ex,. 1, p. 1; Tr. 7171, 7189).

456. Ms. Osequera first learned of the availability of the frequency from the local sales manager at the station where she was then employed, Ed Diaz. Diaz, who was then an applicant for an FM facility at Los Osos, California, recommended that if Ms. Osequera had an interest in pursuing the project (which he viewed as an opportunity) she contact a Mr. Kesselman, a broadcast consultant and attorney used by Diaz on his Los Osos project. Ms. Osequera estimates that this conversation occurred approximately four weeks before the cut-off date for filing an application (Tr. 7116-7118).

457. Ms. Osequera contacted Kesselman within a day or two of her conversation with Diaz and, following a brief introductory telephone conversation, had a second lengthy (one and one half hour) conversation with him about the application process. In this and subsequent conversations, Ms. Osequera and Kesselman discussed at length what would be involved in applying for the facility. Kesselman took Ms. Osequera through the application process and made her aware of all application requirements (financial and otherwise), the need for legal and engineering counsel, and the procedural steps in filing such an application (Tr. 7116). She also discussed with Kesselman the services he would provide as a consultant and the fees he would expect (Tr. 7125, 7127-7128). Ms. Osequera also discussed the project with her family (Tr. 7127-7129). Because of the substantial financial commitment that would be involved she wanted to be sure that she was able and committed to prosecution of the application before she decided to go forward (Tr. 7164).

458. After several additional lengthy discussions with Kesselman and with her family, Ms. Osequera decided to go forward. She and Kesselman agreed on the terms of a consulting arrangement prior to the filing of the application and this agreement was later reduced to writing (New Sounds Ex. 15; Tr. 7140). Their understanding was that Kesselman would help her arrange for legal and engineering counsel, financing, and assist her in the application process (New Sounds Ex. 15; Tr. 2127-2130). Kesselman did assist Ms. Osequera in obtaining legal and engineering counsel and financing, and filing and prosecuting her application (Tr. 7125, 7158, 7194, 7206-7208).

459. Kesselman's fee is contingent. He will be paid a flat fee if Ms. Osequera is successful in obtaining a 51% or greater interest in a construction permit, or hourly fees if there is a settlement in which she obtains less than a majority interest in the permit (New Sounds Ex. 15; Tr. 7127, 7128). The consulting agreement with Kesselman provides that he "shall have no interest of any kind or nature, direct or indirect, either current or prospective, in [Ms. Osequera's] application or the station applied for" (New Sounds Ex. 15, p. 3). The agreement also provides that Ms. Osequera may or may not employ Kesselman as a consultant regarding the station operation (New Sounds, Ex. 15, p. 2). While Ms. Osequera believes Kesselman to be very well qualified, she has elected not to use Kesselman as a consultant if she is successful in obtaining the construction permit (Tr. 7190).

460. Ms. Osequera supplied all of the non-engineering information for the application (including EEO recruitment sources which she contacted) (Tr. 7166-7170). During the course of application preparation, and following its filing, Ms. Osequera spent numerous hours on the telephone and in personal visits with her consultant and attorneys (Tr. 7150, 7207). She has followed up on the initial bank financing commitment obtained from Pacific Valley Bank by personally meeting with the bank's Chairman of the Board to confirm the bank's continuing commitment (Tr. 7212-7213, 7157). Ms. Osequera is the only guarantor for the bank loan (station assets will also be pledged as security), and is solely responsible for paying all costs of prosecuting her application (Tr. 7142-7145, 7152, 7153, 7222-7225). She is familiar with the format of the station currently operating on the frequency - which is successful - and would continue that format (Tr. 7172, 7160).

Integration

461. Ms. Osequera will work full-time, a minimum of 40 hours per week, as general manager of the proposed station. Ms. Osequera will have overall responsibility for the station's day-to-day operations and policy decisions, including supervision of programming, sales, hiring and firing of personnel, and the Equal Employment Opportunity Program. All station department heads will report to her. Ms. Osequera stated that a general manager's "responsibility is to oversee the entire operation of the radio station with regards to sales, programming, hiring, firing and personnel" (Tr. 7176).

462. At the time of hearing in February 1986, Ms. Osequera had resided at 2505 Ocean Cove Drive, Cardiff-by-the-Sea, California since September 1, 1985 (Tr. 7105). This residence is located within the station's proposed 3.16 mV/m coverage area. She has lived in the station's proposed service area since 1979 when she moved to the La Costa area of San Diego. Ms. Osequera subsequently moved to Encinitas, where she resided for more than a year, after which she moved to Solana Beach for two to three years. Ms. Osequera then resided in La Mesa from approximately November 1983 to April 1985. From April 1985 to September 1985 she resided in Carlsbad prior to moving to Cardiff-by-the-Sea. Encinitas, Solana Beach, La Costa and La Mesa are adjacent to or near San Diego and within the proposed 3.16 mV/m contour of the proposed station. Carlsbad is within the 1.0 mV/m contour of the proposed station. If Ms. Osequera's application is granted, she will continue to reside within the station's 3.16 mV/m contour (Osequera Ex. 1, p. 1, 2).

463. Ms. Osequera is currently employed as an account executive at Radio Station KSON, licensed to San Diego with studios in El Cajon, California (approximately ten miles from San Diego) (Tr. 7110-7111). She sells local, regional and national advertising (Tr. 7110). If Ms. Osequera's application is granted she will terminate her employment at KSON. Prior to her employment at KSON, Ms. Osequera was employed as an account executive at FM Station KJQY, San Diego, from September 1984 to October, 1985. She was recruited away from KJQY and KSON (Tr. 7112). From January, 1982 to August, 1984, Ms. Osequera was employed as an account executive at Station KCBQ (AM/FM), San Diego. She sold local, regional and national advertising (Tr. 7113). From January 1981 to January 1982 Ms. Osequera was employed as an account executive at Station KMLO, Vista, California (Osequera Ex. 1, p. 2; Tr. 7104).

464. Ms. Osequera is of Hispanic heritage (Osequera Ex. 1, p. 3). She has been involved in the following civic activities in San Diego or within the service area of the proposed station.

465. From September, 1984 to October, 1985, Ms. Osequera attended and participated in monthly luncheon meetings of the San Diego Chamber of Commerce on behalf of her employer, Station KJQY (Osequera Ex. 1, p. 2; Tr. 7178). KJQY paid the membership fee (Tr. 7178). Since 1983 Ms. Osequera has been a dues paying member of Women in Sales, San Diego, a network of women formed to promote women in sales employment and to assist women in locating jobs (Osequera Ex. 1, p. 2). In 1984 and 1985 she attended 6 or 7 evening meetings of the organization, where women got together to network, exchange leads and discuss jobs (Tr. 7179, 7180). Since 1981 Ms. Osequera has been a member of the Advertising Club of San Diego, a professional organization, and has attended its monthly meetings (Osequera Ex. 1, p. 2; Tr. 7180). The stations she has worked for paid the membership dues (Tr. 7180).

466. Since June, 1984, Ms. Osequera has been a member of the Board of Little Sisters-Big Sisters in San Diego. Ms. Osequera's involvement consists of attending monthly meetings and participating in fundraising activities (Osequera Ex. 1, p. 3). She estimates she spends 10 to 20 hours during the month of the annual principal fund raising activity (Tr. 7182). Ms. Osequera has been a member of the Calvary Chapel Church in Encinitas for the past five years. She attends services there each week. Three or four times a year she helps obtain canned goods and clothing for an orphanage located in Tijuana, Mexico (Osequera Ex. 1, p. 3; Tr. 7183). Ms. Osequera is a member of the Mexican and American Foundation in San Diego. Since 1982 Ms. Osequera has attended, on behalf of Station KCBQ. She has also attended monthly luncheon meetings and seminars. She also obtains publicity by arranging spots on San Diego area radio stations and performs additional functions for the organization (such as helping with arrangements for an annual auction) (Osequera Ex. 1, p. 3; Tr. 7186).

Diversification

467. Ms. Osequera has no ownership interest or connection with any radio or television stations, or any other media of mass communication, except for her current employment at Station KSON, which she will terminate if her application is granted (Osequera Ex. 1, p. 3).

Auxiliary Power

468. If Ms. Osequera's application is granted, she will install auxiliary power generating equipment at the station's studio and transmitter site (Osequera Ex. 1, p. 3).

SOLEDAD BROADCASTING COMPANY (SOLEDAD)

Background

469. Soledad Broadcasting Company (Soledad) is a corporation organized under the laws of the State of California with an authorized capitalization of 100,000 shares of common stock of which 100 shares have been

issued (KCC Exs. 23 and 25, p. 5; Tr. 6864-6866). The officers, directors and stockholders of Soledad are as follows (Soledad Exs. 2, 3 and 4):

Annie M. Gutierrez	President	Director	51%
Oscar Padilla	Vice President Secretary Chief Financial Officer	Director	49%

470. The application of Soledad was filed with the Commission on July 27, 1984. The Articles of Incorporation of Padilla Broadcasting Company, filed with the State of California on July 20, 1984 (KCC Ex. 23), were the original articles of incorporation for the applicant. A Certificate of Amendment, filed August 3, 1984, with the State of California, changed the name of the company to Soledad Broadcasting Company (KCC Ex. 24). Michael E. Padilla, the son of Oscar Padilla, is the registered agent for the corporation (Tr. 6840-6841). Janice Kay Ranson, the signatory, as incorporator, to the original articles of incorporation (KCC Ex. 23) and the Certificate of Amendment (KCC Ex. 24), is an attorney with the firm of Thorsnes, Bartolatta and Padilla; the Padilla in the firm name is Michael Padilla, the son of Oscar Padilla. Ranson is the local legal counsel to Soledad (Tr. 6843, 6870, 7043).

471. Since the filing of the Soledad application, Padilla has had absolutely no discussion with his son concerning the proposal (Tr. 7093). Moreover, since the inception of the corporation that became Soledad Broadcasting Company, Michael Padilla has personally done no legal work for this father. Michael Padilla has never contributed any funds toward the application (Tr. 7094).

472. The registered corporate agent for service of process was changed to Annie Gutierrez at the organizational meeting of Soledad at Janice Ranson's law office on August 29, 1984 (KCC Ex. 25; Tr. 6841, 6848-6849). The minutes of the organizational meeting (KCC Ex. 25) provide that the corporate office of Soledad will be that of Oscar Padilla's insurance business. Four directors are authorized by Soledad's by-laws; however, the minutes of the organizational meeting provide that two of the directorships will be vacant (KCC Ex. 25, p. 2). Annie Gutierrez testified that the reason for providing for four directors was because they had considered having their two respective spouses as directors but have no present intention to do so or to add any other directors (Tr. 6846-6847).

473. In the original application of Soledad, the stock ownership was Oscar Padilla (51%) and Annie Gutierrez (49%), with Oscar Padilla as president and Annie Gutierrez as secretary and chief financial officer. In order to make the application stronger, the stock ownership percentages and offices held were reversed on November 13, 1984 (KCC Ex., 26; Tr. 6854-6856).

474. Oscar Padilla learned of the KIFM(FM) availability in June 1984 from his son Michael Padilla who has other media interests (Tr. 7037). Oscar Padilla informed Annie Gutierrez of the availability, met with her and proceeded with the application (Tr. 6839). Michael Padilla recommended Washington communications counsel, Bruce Eisen, Esq., who has represented Michael Padilla with respect to other stations (Tr. 7052). Annie Gutierrez was asked if she wished to continue with the same representation; she was happy to do so (Tr. 6876). After Ms. Gutierrez came "on board", she also continued with Janice Ranson of Michael Padilla's firm as local counsel because they had worked together on the articles of incorporation and she was comfortable with her (Tr. 6871).

475. Since the corporate address of Soledad is the same as Oscar Padilla's business address, all statements from Michael Padilla's firm and Mr. Eisen's firm are sent there. Annie Gutierrez reviews them after Oscar Padilla sends them to her (Tr. 6872-6873). Oscar Padilla paid the bills from Eisen and Janice Ranson from the corporate account (Tr. 7075-7076). Ms. Gutierrez was designated as chief financial officer of Soledad at the time, shortly after the organizational meeting on August 29, 1984. However, Oscar Padilla opened the corporate checking account of which he was the only authorized signatory. The bank signature card (KCC Ex. 27), which reflects Annie Gutierrez's signature with her title was signed by her sometime after November 1984 (Tr. 7072). Ms. Gutierrez has never signed a check drawn on the corporate account (Tr. 7075).

476. The principals each purchased their stock as indicated in minutes of the organizational meeting of August 29, 1984; Ms. Gutierrez has had her stock certificate for 49 shares since that date (Tr. 6864). In November 1984 she purchased two shares from Oscar Padilla for 200 with a check to Soledad and received a certificate for two more shares (Tr. 6876). Ms. Gutierrez is personally responsible to provide 51% of the costs of prosecution of the Soledad application and the costs of construction and operation. There is no agreement whereby Padilla will advance any part of Ms. Gutierrez's share of the costs to her. Soledad will utilize, at least in part, a bank loan to meet the costs of construction and operation. The bank loan will require personal guarantees from Oscar Padilla and Ms. Gutierrez, which they have given (Tr. 6881-6882, 6887-6891).

477. Padilla and Ms. Gutierrez worked together on completing the application (Tr. 6879, 6882, 6884-6885, 7061). The two principals discussed the contents, relayed the information to counsel and then, together, reviewed the completed form before it was signed (Tr. 7054). In providing the information to counsel, there were several calls made involving counsel, Padilla and Ms. Gutierrez (Tr.7062).

Integration

478. Ms. Gutierrez intends to work a minimum of 40 hours per week at the station as general manager. She will have the primary responsibility for executing, planning and carrying out the organizational structure of the licensee and will be closely involved with recruiting and hiring key personnel in all areas of station operations in concert with the various department heads. She will supervise the execution of duties by management personnel and their staff, advise and consult with the staff on each organizational component such as programming, sales, engineering, and administration, and generally operate as a superior voice in ultimate decision making (Soledad Ex. 2, pp. 3-4).

479. Ms. Gutierrez, an Hispanic female born in 1938, presently resides at Bonita, California where she has resided since August 1981 (Tr. 6833-6834). Ms. Gutierrez's home is within the 70 dbu contour of the proposed FM station (Soledad Ex. 2, p. 1; Kaliedescope Ex. 22). Previously, Ms. Gutierrez lived at Mexico City from 1978 to 1981 (Soledad Ex. 2, p. 1).

480. Ms. Gutierrez is presently an attorney licensed to practice law in the State of California. She testified that her practice was in the process of great contraction, and that she had largely terminated the legal work she had done out of her office in San Diego. She has taken no new cases in her El Centro law office, and generally stated that she was winding down the process so that she could be out of the El Centro office shortly (Soledad Ex. 2, p. 1; Tr. 6891). She intends to terminate her law practice without regard to the grant of a Soledad construction permit (Tr. 6891-6892). Ms. Gutierrez reached this decision because of the burdensome workload that she had maintained and, further, because she has an eleven year old son (Tr. 6892).

481. Ms. Gutierrez testified that her role as general manager of the station would not conflict with her future plans to spend more time with her family. In this regard, she stated that one of the major problems she had confronted was the intensity of a trial practice scattered between two counties. She further noted her belief that operating a radio station would not be as stressful as her past practice of law (Tr. 6893-6894).

482. Ms. Gutierrez is affiliated with San Diego civic and/or charitable organizations located within Soledad's proposed 1 mV/m contour. Since 1981 she has been a member of the California Women Lawyers. She has been associated with Obrero, Inc. since 1982 and sits on the Board of Directors of that organization, a non-profit corporation providing health education and preventive maintenance health programs for Mexican nationals who work on farms in isolated areas of San Diego county. She has been a volunteer with the San Diego Chicano Federation since 1981, and in that capacity has advised the organization with regard to legal cases, assisted in Federation forums and supported various fundraising activities. She has provided legal services to the Federation without fee (Tr. 6906-6907; Soledad Ex. 2, p. 5).

483. Ms. Gutierrez is a member of the Mexican/American Political Association, the purpose of which is to improve the life of the Mexican/American community and to help elect officials who are sensitive to the problems and needs of the Hispanic community. She has been affiliated with that organization since 1983. Ms. Gutierrez serves on the steering committee of the Committee of San Diegans for an Independent Judiciary which is comprised of a group of citizens working toward an independent judiciary, free from political influences. Her work with that organization began in 1983 and continues to the present. She is also a member of the Judicial Advisory Committee for Congressman Bates, and has been affiliated with the Committee since 1983. The Committee encompasses citizens appointed by Congressman Bates to give him their opinions and advice concerning legislation and area issues (Soledad Ex. 2, p. 6).

484. Ms. Gutierrez has been since 1984 the Chairman of the Legislative Committee of the Slingerland Parents Association, a non-profit corporation established to look after the educational interests of dyslexic children in the local area and to try to influence the passage of legislation at the State level so that special programs for the detection and teaching of dyslexic children will be mandated. She has been a member of the San Diego Lawyers Club since 1982, working on issues of general concern with a special interest in the San Diego legal community. Ms. Gutierrez is also a member of the Orton Society of San Diego, an organization informing and educating the area about dyslexia and providing help for people who are suffering from that condition. She has been affiliated with the Orton Society since 1981. Ms. Gutierrez has been a member of the La Raza Lawyers of San Diego from 1981 to 1984. This group is comprised of Hispanic attorneys who work on issues that affect the Hispanic community and provides scholarships for Hispanics to study law. She is a member of the San Diego Trial Lawyers, and has maintained her membership since 1982. This organization works on issues that effect trial lawyers and provides for information and education in the areas of expertise required by practicing trial attorneys (Soledad Ex. 2, p. 7).

485. In 1951 Ms. Gutierrez, who was then 13 years old, began hosting a 4-H news program, once a week over the facilities of Station KROP at Brawley, California. The program covered 4-H events and included guest interviews. Ms. Gutierrez was responsible for writing the material that was broadcast. The program was broadcast for four years. During this same period of time, Ms. Gutierrez worked eight hours a week as a disc jockey at the station and sole advertising (Soledad Ex. 2, p. 4).

486. Oscar Padilla intends to work a minimum of 40 hours per week at the proposed station as sales manager. His duties will consist of the supervision of the station's sales staff, assistance in the recruitment and hiring of a sales staff, retention of a national or regional sales representative, the development of the sales program, the execution of sales and advertising policies, and the review and coordination of sales efforts made by the sales staff (Soledad Ex. 3, p. 1).

487. Padilla, an Hispanic male born in 1924, has lived in San Diego since 1968. He is the owner of a casualty insurance company and also owns and operates the U.S.-Mexico visitor information center which serves travelers to Mexico and the United States. In the event that the Soledad application is granted, Padilla intends to terminate his association with his insurance business and will discontinue any involvement with the visitor information center, a service from which he derives no income (Soledad Ex. 3, p. 1). The insurance business will be turned over to his son, Peter-John, who is licensed by the State of California to operate such a business. This process has already begun (Tr. 7051-7152).

488. Since 1978, Padilla has been a member of the Mexican-American Business and Professional Association at San Diego. In 1983 and 1984 he was a member of the California Republican Hispanic Assembly, San Diego Chapter. Since 1968, he has been a member of the Independent Insurance Agents and Brokers Association of San Diego (Soledad Ex. 3, p. 1). This is a professional organization connected with his business. Padilla holds no leadership position with the organization (Tr. 7098). This organization is involved in crime stopping programs, encouragement of youth to participate in an insurance career, and the administration of scholarship type program (Tr. 7098).

489. Since 1971 he has been a member of the Honorary Deputy Sheriff's Association, San Diego County, and he has also been a member of the Board of Directors of the San Diego YMCA Metropolitan Board. He served on the Board from 1970 to 1976 and again from 1984 to the present. Padilla has been a member of the American Cancer Society Board since 1984 and has also served on the Advisory Committee for the Hispanic Boy Scouts Program in San Diego County since 1984. Since 1982, Padilla has been a member of the Board of Directors of the San

Diego College Foundation, and is presently a member of the Greater San Diego Chamber of Commerce, an organization for which he served as director from 1972 to 1976. From 1983 to 1985, Padilla was a member of the San Diego Convention and Visitors Bureau. He has been on the Advisory Board of the National Conference of Christians and Jews from 1973 to the present. He has been a member of both the San Diego Aero-Space Museum and the San Diego Hall of Science since 1982. Padilla has supported the Meals on Wheels/Senior Adult Services from 1976 to 1980. Each of the foregoing affiliations occurred within Soledad's proposed 1 mV/m contour (Soledad Ex. 3, pp. 1-2).

490. Padilla was appointed by Governor George Deukmejian to the Commission of the Californias as a public member in October 1983. He continues to serve on that commission which has as its purpose the meeting with Mexican counterparts to discuss mutual concerns. The organization has a direct connection to San Diego because of that City's proximity to the Mexican border (Tr. 7099-7100). Since January 1984, Padilla has been on the San Diego Stadium Authority Board of Governors, having been appointed by the San Diego City Council. That organization relates to the policy making of the stadium authority and acts as a trustee for bond holders. Padilla is presently secretary of the Board as well as being a member (Tr. 7100). Padilla was appointed by San Diego's Mayor to the City Planning Commission in 1972 and was reappointed in 1976. He completed that term in 1980 (Soledad Ex. 3, p. 2). He was appointed a delegate to the 1985 Republican National Convention in August 1984 to represent the 41st Congressional District in which he lives. That District is within the service area of the proposed station (Tr. 7100- 7101).

Diversification

491. Soledad and its principals have no interest in any other medium of mass communications (Soledad Ex. 1).

Auxiliary *Power*

492. Soledad proposes the installation and maintenance of auxiliary power generating facilities both at the studio and transmitter sites (Soledad Ex. 4).

MARIA ELENA LASO BRADLEY (BRADLEY)

Background

493. Maria Elena Laso Bradley (Bradley) is an applicant in her individual capacity and will be the sole owner of the proposed station (Bradley Ex. 1, p. 1). Ms. Bradley's husband is Assistant General Manager and Business Manager, Western Division, Midwest Television, Inc., licensee of Stations KFMB, KFMB-FM and KFMB-TV, San Diego (Bradley Ex. 8, p. 1).

494. Mr. Bradley disagreed with Ms. Bradley's desire to pursue her application and the matter has been the subject of several arguments between them (Tr. 7348, 7354). Thus, as Ms. Bradley testified, "my husband made real clear with me, that I could not use his personal assets, I could not use any of the household funds." (Tr. 7320). Ms. Bradley has not used any income from assets that she jointly holds with her husband for the prosecution of the application (Tr. 7259-7260). She established a separate checking account with her individual funds for prosecution of the application. All expenditures in connection with the application have been paid through this checking account and her personal funds (Tr. 7316 and 7319-7320). Additionally, to confirm that her husband would have no financial interest in the station in any event, Mr. Bradley executed an agreement on December 7, 1984 waiving any community property law rights regarding ownership of the broadcast station (Tr. 7320- 7323).

495. Ms. Bradley did not seek any assistance from her husband in preparing or reviewing her application, nor did he assist with or review the application (Tr. 7339, 7349-7351). On one occasion, before she decided to apply, Ms. Bradley did casually discuss with her husband the financial requirements for the station; he gave her a figure which she thought was a very low amount, and, therefore, she did not use that figure but rather decided her own financial requirement (Tr. 7354 and Tr. 7271).

496. Ms. Bradley has undertaken on her own all of the steps necessary for prosecution of the application. She located, consulted with, and negotiated a contract with her engineer after reaching a price suitable to her (Tr. 7269, 7286-7289, and 7311). She also sought and contacted an attorney and reached an agreement with him regarding services and fees (Tr. 7313-7316). By herself, she developed her financial plan for the station and arranged financing (Tr. 7272). Ms. Bradley also arranged for use of the KFMB tenant tower by writing a letter to Mr. Robert Myers at KFMB (TR. 7273- 7275).[75] She placed local public notice regarding her application in compliance with the Commission's rules (Tr. 7317), and prepared her own application for filing with the Commission.[76] Lastly, Ms. Bradley is in charge of maintaining her public inspection file, which is located at the professional office of a friend of hers in San Diego (Tr. 7276-7277).

Integration

497. Ms. Bradley will serve as full-time General Manager of the station and will work at the station at least fourty hours per week (Bradley Ex. 1, p. 1). As General Manager, she will establish and implement the policies and procedures of the station and will be directly responsible for overseeing the station's staff and coordinating the various departments of the station, as well as having overall responsibility for the day-to-day operations of the station (Bradley Ex. 1, p. 1).

498. Ms. Bradley, an Hispanic female, has resided in San Diego County for six years, since July, 1980 (Bradley Ex. 3, p. 1). She resides at 190 Del Mar Shores Terrace, No. 46, Solana Beach, California (Bradley Ex. 3, 1). Solana Beach is in San Diego County less than one mile from the northern boundary of San Diego city, and within the 70 dbu coverage contour of the proposed station (Bradley Ex. 3, p. 1 and Tr. 7238). She has resided at that present address for over three years and previously resided in the same condominium complex; prior to that time, she resided at 627 Santa Rosita, Solana Beach, California (Bradley Ex. 3, p. 1).

499. Ms. Bradley, who was born in 1955 in Washington, D.C., received an Associate Degree in nursing in 1976 from Northern Virginia Community College, outside Washington, D.C. (Bradley Ex. 3, p. 3). She also took some business courses at Mira Costa College in San Diego in 1984. *Id.*

500. After completing nursing school, Ms. Bradley worked for eight months as a part-time evening charge nurse. *Id.* at 4. She then secured a full-time position as a nurse at Childrens' Hospital in Washington, D.C., where she was employed from 1977-1979. *Id.* She also worked briefly at George Washington University Hospital until her move to San Diego in July 1980. *Id.*

501. In San Diego, Ms. Bradley joined a nursing registry named Staff Builders and took assignments ranging from staff relief in area hospitals to private patient care. *Id.* She is still employed by Staff Builders on a free- lance basis. *Id.* Ms. Bradley does not have a schedule or specified hours with Staff Builders. She can vary the number of hours per week she chooses to work (Tr. 7258. *Id.*). In September 1980, Ms. Bradley was hired as a standby relief nurse at Scripps Memorial Hospital in Encinitas, California, where she worked until she resigned in July 1983. *Id.* at 45. At the time of her resignation, she was employed on a full-time basis (Tr. 7258).

502. In May 1985, Ms. Bradley joined the San Diego Red Cross (Tr. 7245). At the same time, she was appointed public speaking chairman for the organization and, as such, she coordinates speaking engagements (*Id.* ; Bradley Ex. 3, p. 2). Since joining, she has presented one program on child safety (Tr. 7246). Prior to joining, Ms. Bradley had spent a total of twenty-four hours assisting with two Red Cross health fairs (Tr. 7247). Late in the summer of 1985, Ms. Bradley became a member of American Women in Radio and Television (AWRT) (Bradley Ex. 3, p. 2; Tr. 7252-7253). She serves on the publicity and hospitality committees and was recently elected Second Vice President (Bradley Ex. 3, p. 2; Tr. 7253-7256). With the exception of the health fairs, Ms. Bradley's involvement in the Red Cross and AWRT did not begin until after the "B" cut-off date in this proceeding.

503. Ms. Bradley's prior civic involvement consisted mainly of passing out pamphlets for the San Diego Heart Association and selling raffle tickets for the Hospital Hospice Group (Bradley Ex. 3, p. 2; Tr: 7242-7244, 7250-7251). Both of these activities were in connection with her employment at Scripps Memorial Hospital and the time spent in each was minimal. (Selling raffle tickets required less than ten hours per year.) (Tr. 7242, 7250-7251, 7310). Although while she was employed at Scripps, Ms. Bradley also put her name on a list of nurses who volunteered assistance to the Red Cross in times of emergency, she never helped in response to a call until January 1986 (Bradley Ex. 3, p. 2; Tr. 7249). Ms. Bradley also helped out one time with a fashion show for the La Jolla Women's Guild although she never became a member of the organization (Tr. 7250).

Diversification

504. Ms.Bradley has no interest in any radio, television, or other media communications entity (Bradley Ex. 2, p. 1). As noted earlier, Ms. Bradley's husband, John Monroe Bradley, is Assistant General Manager and Business Manager of the Westen Division of Midwest Television, Inc. (Midwest) (Bradley Ex. 8, p. 1). Mr. Bradley is not an officer or director and owns no stock in Midwest (Tr. 7233-7234). Midwest is the licensee of Stations KFMB(AM), KFMB-FM, KFMB-TV, San Diego, California. These three stations make up the Western Division (Bradley Ex. 8, p. 1).

505. Mr. Bradley is responsible for the internal business affairs activities and the engineering operations of all three Western Division stations (Bradley Ex. 8, p. 1). He oversees staff and support services, personnel matters, and accounting functions at the radio and television stations. *Id.*[77] His duties include coordination of recruitment and hiring for KFMB AM/FM and KFMB-TV and implementation of the station's equal employment opportunity program (Vista Grande Ex. 19, p. 1). Mr. Bradley seeks out qualified applicants for the stations and maintains contact with certain organizations to encourage hiring of minority and female employees (*Id.* p. 1, 3). Requests to fill vacancies must be submitted to Mr. Bradley, who then, in consultation with department heads and supervisors, coordinates hiring (*Id.*, 1, 4). Mr. Bradley does not intend to resign his position if his wife's application is granted (Tr. 7233).

506. Mr. Bradley is not involved in, and has no responsibility over, the programming and sales activities of the Western Division and/or the stations which comprise the Division. He reports directly to Mr. Robert Myers who is President and General Manager of the Western Division and Vice President of Midwest Television, Inc.

507. Station KFMB AM/FM and KFMB-TV have separate management staffs. The General Manager of Station KFMB AM/FM is Mr. Paul Palmer who additionally is a Vice President, Western Division. Mr. Palmer reports directly to the President of the Western Division, Mr. Myers. No KFMB AM/FM management personnel report to Mr. Bradley except for the station's chief engineer who reports to Mr. Bradley in addition to reporting to the station's general manager. Mr. Bradley does not report to Mr. Palmer. The senior KFMB-TV management person, William Moylan, Vice President (Western Division), sales and programming, also reports directly to the President, Western Division, Mr. Myers. With the exception of KFMB-TV's engineering manager and the television traffic manager, no television management personnel report to Mr. Bradley. Mr. Bradley does not report to any television personnel (Bradley Ex. 8).

Auxiliary Power

508. Bradley will utilize auxiliary power facilities to provide continued service in the event of a power disruption (Bradley Ex. 4, p. 1).

QUALIFICATION ISSUES KALIEDESCOPE COMMUNICATIONS COMMITTEE (KCC)

509. Real party in interest and misrepresentation/lack of candor issues have been designated against KCC. The findings made under the standard comparative issue (Findings 71-121) are applicable to resolution of these issues and are incorporated herein. The financial issues designated against KCC is discussed below.[78]

Financial Issue

510. KCC's cost estimates for construction and operation are based on an itemized equipment proposal from a supplier, Harris Corporation, advice of the applicant's legal and engineering counsel, inquiry and experience (KCC Ex. 8, pp. 2, 4-16). The estimated costs of construction of

KCC's proposed facilities are266,675; its estimated costs of operation for the first three months are95,507; for a total cost of362,182 (KCC Ex. 8, pp. 2-3).

511. To meet the foregoing requirements, KCC will have the following financial resources (KCC Ex. 8, p. 17):

Credit from equipment supplier:		
Equipment cost (per Harris proposal, KCC Ex. 8, pp. 4-16)		119,675
Less:		
Down payment (25%)		29,919
Monthly payments for 4 months (@ 15.6% interest, payable in 60 months)	38,575	8,656
New capital and loan:	in excess of	81,100
Total Financing Available	in excess of	281,082
		362,182

The credit on the equipment purchase will be available pursuant to an offer thereof by Harris Corporation (KCC Ex. 8, pp. 25-26). The funds for construction and initial operation (new capital and loan, supra) will be provided by Roger J. Christel; Mrs. Christel has joined in his proposal insofar as jointly held assets might be involved (KCC Ex. 8, p. 18). Mr. and Mrs. Christel have assets of3,964,200 of which1,055,000 is cash on deposit (KCC Ex. 8, pp. 22-23). Mr. and Mrs. Christel's liabilities total147,000 (of which144,000 is mortgages). Christel, thus, has cash resources available in excess of all liabilities of908,000.

512. A "Supplement to Petition to Amend", proffered December 3, 1985 in the form of letters signed by Christel and by KCC Inc., as part of KCC's financial qualifications showing, also set out the arrangement by which funds advanced by Christel to KCC Inc. would then be funnelled as loans to KCC. The loans to KCC would be forgiven on the assignment of the construction permit to KCC, Inc. The letters also contain Christel's statement that he may purchase the station's physical assets in his own name (KCC Ex. 12). Christel testified at hearing that he expect that he *will* hold title to all of the station's physical assets in his own name (Tr. 1668). The Presiding Judge accepted KCC's November 13, 1985 Petition to Amend (as supplemented), only insofar as the Amendment relates to KCC's financial qualifications. In *all other respects*, the Petition to Amend KCC produced was denied. *See Order* released February 25, 1986, FCC 86M-689.

513. Both the "Supplement to Petition to Amend" and the "Supplement to Stock Subscription," also proffered December 3, 1985, include a recitation that Christel will have a security interest in all assets and all accounts receivable of the proposed station (TBB EX. 15; KCC Ex. 12). At the hearing, Christel testified that his understanding is that he would have a security interest in the FCC license for the proposed station (Tr. 1670). He testified further that if he could not get such an interest in the license he would not have undertaken his provision of funds to the applicant (Tr. 1683). After two unsuccessful attempts (by tender of a rejected exhibit and by rejection of further rebuttal testimony) by KCC to "correct" Christel's hearing testimony concerning his security interest in the license, KCC's "Petition to Amend dated April 7, 1986, was accepted by the Presiding Judge insofar as it may indicate Christel's willingness to go ahead with his loans to KCC Inc. notwithstanding that he cannot, as a matter of law, use the FCC license as collateral (Tr. 8834, 8835).

SIMPSON COMMUNICATIONS LTD. (SIMPSON)

514. Issue 6 seeks a determination whether Simpson misrepresented facts and lacked candor in representing in its application that its principals had, as of the date of its application, a limited partnership agreement formalizing its limited partnership structure. Issue 7 calls for a determination whether principals of Simpson misrepresented facts and lacked candor in sworn testimony in these proceedings concerning the date when a limited partnership agreement was, in fact, executed.

Application Misrepresentation (Issue 6)

515. As noted, *supra*, the principals of Simpson are Clementine Simpson, 20% equity owner and "general partner"; John Klinedinst, 40% equity owner and "limited partner"; and Richard Leverrier, 20% equity owner and "limited partner" (Simpson Ex. 1).

516. Simpson, at the time of filing its application on July 27, 1984 (CWIR Ex. 11), stated that it was a limited partnership and further averred that "the principals have a limited partnership agreement which, *inter alia*, formalizes the limited partnership structure noted in Section 2, p. 2 of this application." (Exhibit 2 to Simpson application - CWIR Exhibit 11.) The application was signed by Clementine Simpson as general partner and dated July 26, 1984.[79] In fact, no limited partnership agreement was prepared between the parties until the summer of 1985 (Tr. 1578-1579, 8268).[80] Only a form Certificate of Limited Partnership was filed with the Secretary of State of California on July 25, 1984 (Simpson Ex. 22). This form merely states the name and address of the partnership and the identity of the general partner. It does not set forth any of the substantive terms and conditions of a partnership agreement.

517. Both Klinedinst and Ms. Simpson testified that the written partnership agreement, prepared and signed in 1985, was to memorialize earlier oral understandings or agreements reached between the parties (Tr. 8295). There is nothing, however, to establish or demonstrate the nature of these alleged oral understandings beyond the recollection of the parties. Ms. Simpson stated that she retained no notes of any of her pre-application meetings with Messrs. Klinedinst and Meiser (Tr. 1450) and nothing concerning these agreements was reduced to writing, as noted, until 1985 (Tr. 8283-8285, 8290). Ms. Simpson testified that the extent of these oral agreements were that: (a) she was to manage the proposed radio station; (b) the other principals would be "investors" and not involved in the daily affairs of the station; (c) the respective equity percentages would be as set forth in their application; and, (d) each would contribute funds to pursue the application and construct and operate the station pro rata according to their equity percentage (Tr. 1537-1539, 8291, 8292). Nothing in such agreements or understandings relates to voting powers of the partners, admission of new general

partners or in any way isolates the purported "limited partners" from involvement in management and operation of the broadcast activities of the station (Tr. 8299-8300). Further, it is difficult to see how any of such verbal "understandings" were reached with the fourth partner, Richard Leverrier, since Ms. Simpson never spoke to Mr. Leverrier prior to filing of the application, nor did she even meet him until the time of the hearings in Washington, D.C. (Tr. 1465). It also appears that neither Messrs. Klinedinst or Meiser met or directly communicated with Mr. Leverrier at any time prior to filing of the application or prior to the "B" cut-off date (Tr. 1576, 1620).

518. Significantly, the written limited partnership agreement differs in substantial material respects from the alleged oral understandings of the parties. Each of the principals, in Summer, 1985, made initial capital contributions to the partnership (Tr. 1501-1502). Up until that time no contributions had been made and no bank account established for the partnership. Ms. Simpson, Meiser and Leverrier each contributed200 and Klinedinst contributed400. These are identified in the limited partnership agreement as the "initial capital contributions" (Simpson Ex. 3, section 2.2).

519. Despite the testimony of Ms. Simpson, Klinedinst and Meiser that the parties had agreed to make additional contributions, on a pro rata basis, to the costs of pursuit of Simpson's application and contribution and operation of the proposed station, the written limited partnership agreement expressly provides that no partner, general or limited, may be required to make any contributions beyond his or her initial capital contribution and no partner is required even to make loans to the partnership (Tr. 1582-1583, 1616, 8295-8299; Simpson Ex. 3, section 2.3).[81]

520. Ms. Simpson continued, at hearing, to insist that the principals' oral agreement or understanding was other than as set forth in the limited partnership agreement even though this written agreement specifically provides that it supercedes any and all prior negotiations, understandings or agreements (Simpson Ex. 3, section 8.8; Tr. 8299). Klinedinst and Meiser likewise insisted that the contribution obligations of the partners was other than as set forth in the written agreement (Tr. 1582, 1613). This testimony is also difficult to accept if not completely incredible if, in fact, there were the prior oral understandings that the principals contend existed. The written limited partnership agreement was prepared by Simpson's communications counsel, revised in the law offices of Klinedinst and Meiser in San Diego (Tr. 1605), read, reviewed and discussed among the principals in the offices of Messrs. Klinedinst and Meiser (Tr. 1505-1506, 8295), and signed by all principals. Yet, Ms. Simpson, who is a businesswomen, and both Klinedinst and Meiser, who are attorneys, insist that the agreement does not mean what it says it does. (Klinedinst also has an MBA degree. Tr. 1587). As noted above, there is certainly nothing in writing in any form which supports the existence of substantive terms and conditions relating to any partnership agreement, general or limited, prior to the preparation of the present written agreement.

521. Klinedinst and Meiser have not acted as "limited" partners in the pursuit of Simpson's application since they have participated in every aspect of the application up to the time of the hearings. It was Klinedinst who conceived the idea of preparing and submitting an application in this proceeding (Tr. 1458, 1562) and Klinedinst and Meiser who sought out and recruited Ms. Simpson to serve as the "general" partner and proposed Manager of Simpson's station although Ms. Simpson has no prior broadcast experience of any nature (Tr. 1562-1565, 1589-1595). All documents relating to Simpson's application have been prepared with the assistance of, or forwarded through, the Klinedinst and Meiser Law Offices (e.g., Simpson Ex. 2). Simpson's application was forwarded not to the "general partner" but to Klinedinst and Meiser in final form and Ms. Simpson went to the law offices to sign the application and the Certificate of Limited Partnership (Tr. 1451-1453; 8287).[82] As with the later written limited partnership agreement, Ms. Simpson left the application undated, and the date was subsequently filled in by Klinedinst (Tr. 1477-1480, 1604). Klinedinst filed the Certificate of Limited Partnership and is identified as the legal agent for service of process for the partnership (Simpson Ex. 2; Tr. 1619). The initial draft of the limited partnership agreement was revised in the San Diego law offices (Tr. 1579, 1605) and the final written limited partnership agreement was signed by Ms. Simpson in Klinedinst's office on the morning of her deposition, September 16, 1985, again leaving the date blank to be filled in subsequently by Klinedinst (Tr. 1480, 8318). There was not even a bank account established for the partnership until summer, 1985 (Tr. 1495)

False Deposition / Hearing Testimony (Issue 7)

522. Simpson presented at hearing, and at previous depositions of its principals, a limited partnership agreement which bears a partially handwritten date of the 26th day of July, 1984 (Simpson Ex. 3). It is signed by Clementine Simpson as general partner and by each of the "limited partners. When presented with a copy of this document at her deposition in San Diego, California on September 16, 1985, Ms. Simpson testified unequivocally under oath that she had signed that partnershp agreement on July 26, 1984 (Tr. 1481-1482, 8286). When her attention was directed to the fact that the typewritten date on the signature page was 198 *5* and that the numeral 5 had been handwritten over to change the date to 198 *4*. Ms. Simpson said that this was merely a typgraphical error. She insisted that she had a clear recollection of having signed the document at the time indicated by the handwritten date, i.e., in July, 1984 (Tr. 1483, 8282).[83]

523. In fact, Simpson's limited partnership agreement was not prepared even in draft form until the summer of 1985 (Tr. 1506-1507, 1578- 1579, 8284) and was signed by Ms. Simpson on the very morning of her deposition, less than an hour prior to being deposed and less than two hours prior to her testimony on the subject (Tr. 8242). Klinedinst and Meiser also signed the agreement on September 16, 1985, when their depositions were also taken (Tr. 1601). Leverrier apparently signed on the date of his deposition in Washington, D.C. in October, 1985 (Tr. 2945-2948).[84]

524. Ms. Simpson testified at hearing on December 5, 1985 and May 19, 1985. In her hearing testimony Ms. Simpson attempted to characterize her prior testimony as attributable to confusion as to the document being shown her and the stress of being deposed (Tr. 1547, 8271). Her explanation is not credible. Ms. Simpson is a businesswoman of some 13 or 14 years experience. She was ostensibly selected as general partner for Simpson Communications by Messrs. Klinedinst and Meiser because of her business experience (Tr. 1446). She acknowledged that on the morning of her deposition, she was well aware that

she was signing the limited partnership agreement (Tr. 1550, 8261). She further admitted in her testimony that she was certainly aware that the limited partnership certificate she had signed (Simpson Ex. 2) in 1984 was *not* the limited partnership agreement (Tr. 1552-1553, 8260). It is certainly not possible to physically confuse the limited partnership agreement, a document consisting of some 19 pages, with the partnership certificate, which is a single page document.

525. Despite Ms. Simpson's claim of fatigue (Tr. 1547), the record reflect that Ms. Simpson's false testimony was given immediately after a recess in her deposition (Tr. 1489, 8280), that she was asked to familiarize herself with the entire document before identifying it (Tr. 1482, 8269, 8270), and that she expressed no uncertainty or confusion as to either the identity of the document or her understanding of it (Tr. 1482-1483, 8270, 8278).

526. Ms. Simpson attempted to justify her deposition testimony by contending that she had signed so many documents on behalf of Simpson, that she was confused (Tr. 1533). In fact, the only documents as of the deposition date which Ms. Simpson had signed on behalf of the applicant were the application itself (CWIR Ex. 11), the Certificate of Limited Partnership (Simpson Ex. 3) and the Agreement of Limited Partnership (Simpson Ex. 3) (Tr. 1533-1534).

527. It is also significant that Ms. Simpson certified the transcript of her deposition as true and correct and made no effort to amend or change her responses (Tr. 8282-8286, 8326). Only after a petition to enlarge issues based on the erroneous testimony was filed against Simpson did Ms. Simpson modify her testimony.

SAN DIEGO BROADCASTING (SDB)

Martinez' Felony Conviction [85](Issue 8)

528. In December of 1982, Uvaldo A. Martinez, Jr., one of SDB's general partners, was appointed a City Councilman of the city of San Diego, California to fill an unexpired term (ComTrends Ex. 13, p. 2). Martinez was provided with a credit card for the purpose of paying for expenses incurred in conducting official City business. The use of the credit card was covered by City regulations and policy prohibiting its use for payment of personal expenses and requiring each recipient of a City credit card to sign a memorandum acknowledging that prohibition. *Id.*

529. On March 12, 1986, Martinez was charged with 24 counts of violation of Sections 424.1 and 424.3 of the California Penal Code (SDB Ex. 16-17; ComTrends Ex. 13, pp. 2-3). California Penal Code Section 424 prohibits any city official from appropriating public funds to his own use or to the use of another individual (section 424.1) or keeping a false account or making a false entry in an account relating to the disbursement of public funds (section 424.3). Each category of violation is defined as a felony under Section 17(a) of that Code.

530. The 24 counts of which Martinez was charged covered the period from November 1, 1984 through June 28, 1985, and were of two different types. In nine of the counts, Martinez was charged with misappropriating City funds to pay for luncheons or dinners which were not related to the conduct of City business, while in the remaining 15 counts he was charged with embezzling public funds by listing on his vouchers persons who were not present at meals for which the City was charged, when in fact, he was entertaining other persons (*See* SDB Ex. 16; ComTrends Ex. 13, pp. 2-3).

531. Martinez ultimately reached an agreement with the District Attorney's office pursuant to which he pled guilty to one count of each type of felony (SDB Ex. 18; ComTrends Ex. 13, p. 3). Specifically, Martinez pled guilty to embezzlement under Count 10, which stated that he had billed the City50.26 for the cost of a dinner purportedly with a property developer. In fact, Martinez had hosted a group of four other persons, including a local radio announcer, after a professional baseball game (ComTrends Ex. 13, p. 3).

532. In addition, Martinez pled guilty to misappropriation of City funds under Count 11. That count related to another luncheon with the local radio announcer, Ms. Kathy Aunan, on May 13, 1985. Martinez' accounting indicated that he had treated Ms. Aunan to lunch at a cost of18.13, to discuss an upcoming charity event in which they were to be involved. *Id.* at 4. In fact, Martinez and Ms. Aunan discussed radio broadcasting in general and Martinez' involvement in an application for a commercial radio license previously held by a local station that had lost its authorization -- obviously the facilities at issue in this proceeding. *Id.*

533. In return for Martinez' plea of guilty to the two felony counts, the District Attorney agreed to dismiss the remaining counts of the indictment (SDB Ex. 18, p. 2). Martinez also agreed to resign from office, not to run for or hold any further elected office, and to make restitution in an amount to be determined by the court. *Id.* Martinez was thereafter convicted of embezzlement by a public officer and misappropriation of public funds, served one day in custody, and received a suspended three year sentence. Martinez also was ordered to pay607.80 in restitution and to do 400 hours of volunteer work (SDB Ex. 19).

Conclusions

534. It is well established that only basically qualified applicants are entitled to comparative consideration. *Louis Adelman*, 28 FCC 432 (1960), recon. denied, 29 FCC 1223 (1960) aff'd sub nom. *Guinan , et al.*, v *FCC*, 297 F.2d 782 (D.C. Cir. 1961). It is therefore appropriate to now address the qualifying issues specified against Kaliedescope Communications Committee (KCC), Simpson Communications Ltd. (Simpson), and San Diego Broadcasting (SDB).

KALIEDESCOPE COMMUNICATIONS COMMITTEE (KCC)

Mispresentations and Lack of Candor (Issue 3)

535. The Commission and the Courts have emphasized that this agency's scheme of regulations is premised on the Commission's ability to depend upon the accuracy and truthfulness of the representations of its prospective licensees and that applicants have an affirmative duty to inform the Commission of facts the Commission needs to know in order to fulfill its statutory mandate. *RKO General, Inc.* v. *FCC*, 670 F.2d 215, 232 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 (1982)

536. KCC's failure to reveal the actual nature and identify of the unincorporated organization - "Kaliedescope Communications Committee" -listed on its application for

a construction permit was an intentional misrepresentation and warrants the applicant's disqualification. KCC represented to the Commission that the unincorporated organization consisted of only three persons. However, the findings establish that many more persons other than the Named Principals listed on the application were members of KCC. The contemporaneous minutes of meetings of KCC show that as of the date of the application, these undisclosed principals had voting rights, looked for investors, did community surveys, looked for station sites, contributed money, served on the applicant's Executive Board and that in general, the process of applying for the station license was seen as a "group endeavor". The accuracy of the minutes was confirmed by the Named Principals at deposition and again later at the hearing.

537. KCC urges, on the basis of later testimony of its Named Principals and certain of its undisclosed principals, that the minutes, which were not disputed at the time of their receipt in evidence, should not be relied on. KCC witnesses claim that there were two groups with the same name; that the group reflected in the minutes was "advisory only"; and that the minutes fail to reflect that two meetings occurred at the same place and the same time but in different rooms, i.e., the committee as a whole met in one room and the Named Principals met in other rooms with Ms. Hardieway going back and forth taking minutes which later got "commingled." KCC's attempt to reshape its story is not believable and is rejected. The revised testimony of KCC's Named Principals contradicts both their testimony at deposition and at hearing and all the extrinsic contemporaneous documentary testimony. Also, the testimony of KCC's other witnesses contradicts the testimony of the Named Principals, is inconsistent with the extrinsic evidence, and is full of internal inconsistencies.

538. The findings establish that KCC's concealment of the identity of all of its principals was intentional, not inadvertent. The motive for such concealment was to maintain an all female "front" and to strengthen KCC's integration credit. KCC must be disqualified for misrepresenting its membership. As demonstrated by the record, KCC has compounded its initial false representation by providing inconsistent and misleading testimony in an attempt to conceal the truth from the Commission. The unwillingness of KCC to be candid with the Commission shows a disregard for the integrity of the Commission's processes and provides an independent basis for KCC's disqualification.

Real Party In Interest Issue

539. KCC must also be disqualified because Roger Christel is the real party in interest behind KCC's application. The Commission's test for determining whether a third party is a real party in interest is whether that party has "an ownership interest, or will be in a position to actually or potentially control the operation of the station". *KOWL, Inc.* 49 FCC 2nd 962, 964 (Rev. Bd. 1974). In determining control, the Commission looks beyond the stated ownership structure and reviews financial indicia of control as well as practical indicia, *i. e.*, the level of sophistication and experience of the proposed principals, the relationship between the third party and the proposed principals and the willingness of the proposed principals to abdicate control over the application and funding process. *See , e. g., Peoria Community Broadcasters, Inc.*, 79 FCC 2d 311, (1980); *Town and Country Radio, Inc.*, 28 FCC 2d 129, (1960); *WWIZ, Inc.*, 36 FCC 562, 2 RR 2d 169 (1964), *affmd. sub. nom. ; Lorain Journal, Co. v. FCC.*, 351 F.2d 824, 5 RR 2d 2111 (D.C. Cir. 1965). The record evidence demonstrates that Christel not only intends to own virtually all equity in the applicant, but also that he will actually control the operation of the station.

540. The Commission has long recognized the inherent problems in maintaining control of a station where someone else controls the purse strings. *See , e. g., Channel 31, Inc.*, 45 RR 2d 420 (1979); *Heitmeyer v. FCC*, 45 F.2d 91, 99 (D.C. Cir. 1937). In contrast to the Named Principals' lack of involvement in the applicant's expenses and their lack of liability in the future, Christel will provide "all" funds "reasonably needed" for prosecution of the application and for construction and operation of the station. While the provision of all funds would not alone be dispositive of the issue of control of the applicant, the evidence of record indicates Christel will also control the proposed station. Apparently, Christel can, on his own, determine what funds are "reasonably necessary" because there is no mechanism for the Named Principals to demand monies from their investor. Further, Christel believes he has a right to own 80% of the ultimate applicant entity -- KCC, Inc. -- now, without having to fulfill any further obligation to transfer funds. In addition, Christel contemplates that he will not only purchase the assets that are going to be used to construct the station but that he will actually have title to them in his own name. Indeed, the proposed supplier of all station equipment has negotiated directly with Christel, extending credit to him and not to the applicant. Such absolute control over construction financing and station assets evidences the probability of continuing control over the applicant. *See Louisiana Supercommunications Limited*, 2 FCC 2d 1293 (Review Board 1985).

541. Indeed, no speculation is necessary as to whether Christel intends to have ultimate control since he explicitly stated on the record that he will be able to take action to force the three named principals to operate the station in a proper manner. Nothing in KCC, Inc.'s untimely corporate documents contradict this expectation since nothing in these documents prevents Christel from exercising management control over the proposed station's operations. Christel's expectation that the Named Principals will not, in fact control the station, is strikingly revealed by his testimony that he did not bother to inquire about the business background of Ms. Jackson, the proposed General Manager of the station either before or even after deciding to back the applicant and that he made the decision to back the applicant before even speaking to the named principals. The above facts are simply inconsistent with the notion that the Named Principals will actually be in charge of the proposed station. To the contrary, the Named Principals have become mere proxies for Christel, and are completely dominated by him.

Financial Qualifications Issue

542. A financial qualifications issue was designated against KCC in the Hearing Designation Order due to KCC's inability to certify as to it financial qualifications. KCC's financial certification is based on the provision of all funds by Christel. KCC will require 362,182 for construction costs and three months operation expenses.

(Christel has cash resources available in excess of all liabilities of908,000. Therefore KCC is financially qualified.

SIMPSON COMMUNICATIONS LTD. (SIMPSON)

Misrepresentation / lack of Candor (Issues 6, 7)

543. The findings require the conclusion that Simpson misrepresented facts and lacked candor in its application and in the sworn testimony of its principals. Simpson's transgressions compel its disqualification.

544. The findings establish that Simpson falsely represented in its application that it, as of July 26, 1984, had a limited partnership agreement which "formalized" its limited partnership structure. Simpson's use of the word "formalized" to describe its limited partnership structure necessarily presupposes the existence of a written agreement. However, the record establishes that Simpson did not have in place at that time a written agreement. In fact, a written agreement was not prepared even in draft form until the summer of 1985. Also, it should be noted that there was no oral agreement setting forth the rights and obligations of the partners. At most, there existed a verbal understanding of the most rudimentary nature. Even the existence of this "verbal understanding" is suspect since its terms were not communicated to Leverrier, one of the four partners. By describing its partnership structure as "formalized," Simpson intended to allay any suspicious concerning the *bona fides* of its partnership arrangement. Simpson's intentional deception warrants its disqualification.

545. The findings further establish that Clementine Simpson, Simpson's general partner, gave knowingly false testimony at deposition and hearing concerning the date of execution of the partnership agreement. At her deposition on September 16, 1985, Ms. Simpson testified unequivocally that she had signed the partnership agreement on July 26, 1984, prior to filing the Simpson application. In fact, Ms. Simpson signed the partnership agreement less than an hour prior to being deposed. Her explanations given at hearing for this false testimony are unconvincing and lack credibility. Her false deposition testimony was intended to conceal facts from the Commission concerning the true nature of the "formalized" partnership structure as represented in Simpson's application. Ms. Simpson's unwillingness to be forthcoming at hearing concerning her deposition testimony provides further justification for Simpson's disqualification.

SAN DIEGO BROADCASTING (SDB)

Martinez' Felony Conviction (Issue 8)

546. Martinez and SDB do not dispute that he pled guilty to and was convicted of the felonies of embezzlement by a public officer and misappropriation of public funds. SDB has offered no evidence in mitigation of Martinez' criminal conduct. Accordingly, it must be concluded, consistent with the Commission's policy regarding *Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 59 RR 2d 801 (1986), *aff' d on recon.*, 61 RR 2d 619 (1986) (*Character Policy Statement),* that Martinez and SDB, of which he is a general partner, are not qualified to become licensees of the Commission.

547. Indeed, the *Character Policy Statement* specifically identifies as offenses calling into question an applicant's basic qualifications "fraudulent representations to another governmental unit" and "criminal convictions involving false statement or dishonesty." 102 FCC 2d at 1196, 59 RR 2d at 813. Martinez' misconduct falls squarely within each of these categories of criminal misconduct. Thus, while holding a public office -- and in fact during the period in which he and SDB were prosecuting their application for a Commission license -- Martinez admittedly falsified his expense reports and misappropriated public funds to his own use. In these circumstances, it is clear that Martinez cannot be deemed to hold the character traits of truthfulness and reliability that are essential in a Commission license. Accordingly, SDB must be disqualified.

548. Notwithstanding Martinez' admitted criminal violations -- both involving fraud and dishonesty and both occurring not only while Martinez held a position of public trust but, moreover, while he and SDB were prosecuting its application for the San Diego FM authorization -- SDB argues that it should not be disqualified. As shown below, however, SDB's argument are unavailing.

549. First, SDB suggests that because the applicant is a limited partnership, comprised of five individuals, it is not "crucial to the designated issue whether Uvaldo Martinez, as an individual applicant, would be qualified to be a Commission licensee." SDB SPFC at 11. The Commission, however, made absolutely clear in its *Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 59 RR 2d 801, *aff' d on recon.*, 61 RR 2d 619 (1986) (*Character Policy Statement),* that

> [i]t is the Commission's intention that applicants be treated as consistently as is possible with respect to character qualifications, with the minimum necessary regard given to the legal form in which they do business. Thus, we find as an initial matter that the same types of misconduct should be considered when corporate applicants are involved as when the applicant is a sole proprietorship or partnership. The same violations of the Commissions Act, Commission rules or Commission policies and adjudicated cases of relevant non- FCC misconduct have a bearing on the qualifications of an applicant entity regardless of the form in which it does business.

102 FCC 2d at 1217, 59 RR 2d at 827 (footnotes omitted). The Commission also recognized that corporate misconduct often can be cured by replacing management and directors, "whereas individual malfeasants may not so easily change their spots." 102 FCC 2d at 1217 n.91, 59 RR 2d at 827 n. 91, *quoting RKO General, Inc. v. FCC*, 670 F.2d 215, 227 n.33 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 (1982). Further, the Commission stated, "wrongdoing by corporate managers who are also controlling stockholders will be treated as though the individuals were sole proprietors or partners." 102 FCC 2d at 1218, 59 RR 2d at 828.

550. Here, Martinez' actions clearly bear on SDB's qualifications, SDB has made no effort to "change its spots." Martinez remains a general partner with a 25% voting interest in SDB and the proposed Programming Director of the new FM station. While SDB urges that Martinez will not serve "in one of the top two positions at SDB's station," it offers no support whatsoever for the obviously untenable notion that Martinez' role is not within the scope of the Commission's appropriate concern. On

the contrary, as Program Director, Martinez clearly would have major responsibilities for the licensee's compliance with FCC rules and policies and for its service to its community of license. Thus, *his* character and, in particular, his trustworthiness plainly are relevant to the Commission's inquiry in this proceeding.

551. SDB next argues that the broadcast experience of two of its owners, Thomas Jiminez and Ronald Fowler, and not Martinez' misconduct, is the "best evidence of SDB's future broadcast performance" (SDB SPFC at 12-13). SDB's contentions is rejected. SDB has claimed throughout this proceeding that Fowler is only a limited partner in SDB and will not have any active role in station operations. It cannot contend at the same time that he will somehow guarantee reliable performance by SDB. Additionally, Jiminez, like Martinez, is a general partner, but has only a 25% voting interest, and can be deemed to have no greater control over SDB and its operation of the proposed station then will Martinez or either of the other two general partners. Moreover, Jiminez' broadcast *record*, as opposed to his broadcast experience, is not in evidence in this proceeding. Thus, SDB's self-serving claims of past compliance with FCC requirements cannot be credited. They would, in any event, be insufficient to outweigh Martinez' two felony convictions.

552. Finally, SDB urges that Martinez' crimes are "isolated actions in a *lifetime* of otherwise unblemished service to others" and "should not be viewed as an albatross around his neck." SDB SPFC at 14 (emphasis in original). The fact remains, however, that in the very recent past, when he had achieved a position of trust in his community, Martinez abused that trust. He did so, moreover, while he and SDB were actively seeking the authorization for the new FM station at issue here. Martinez' misconduct is telling evidence that he cannot be expected to be a reliable and trustworthy licensee of the Commission. Therefore, SDB is disqualified.

Comparative Considerations

553. It has been ruled, *supra*, that Simpson, KCC and SDB do not possess the requisite qualifications to be a Commission licensee. However, since a reviewing authority may disagree with these conclusions, the comparative evaluation set forth, *infra*, includes consideration of their comparative showings.

554. Twenty-two applicants contest a construction permit for a new FM broadcast station to operate on Channel 251B at San Diego, California, thereby replacing the interim operator of Station KIFM-FM. Two of these applicants, National University and Colom Communications, have proposed no integration of ownership and management. In addition, Colom Communications suffers a moderate to substantial diversification demerit for its many media interests. Thus, both applicants are eliminated from further consideration.

555. The twenty remaining applicants all propose 100% integration of ownership and management. Many have also sought qualitative enhancement credit for local residence, civic participation, minority ownership, female ownership and past broadcast experience. Each applicant has proposed auxiliary power facilities. However, in a number of cases, the request for 100% integration credit is not supportable. Close scrutiny of their proposals requires a conclusion that the proposal is a sham or deserving of less than 100% integration credit. These applications will be first considered.

HARBOR COMMUNICATIONS

556. Despite Harbor's claimed 100% integration credit, it is actually entitled to no integration credit. Harbor is not a *bona fide* limited partnership and limited partner Cecil Butler has exercised *de facto* control of the applicant. Furthermore, Ms. Sheryl Carey, the sole general partner and proposed integrated principal, has only a 10% equity interest in the applicant. This 10% equity interest requires particular scrutiny of the *bona fides* of the Harbor limited partnership for comparative integration purposes, a scrutiny which it clearly cannot withstand in view of Butler's undeniable control over the central aspects of the prosecution of the application. *Independent Masters, Ltd.*, 60 RR 2d 835 (Rev Bd. 1986). For these reasons, Harbor is entitled to no integration credit.

557. Even if Harbor were entitled to some quantitative integration credit, that credit would be enhanced only by Ms. Carey's status as a minority woman. Ms. Carey has never lived in San Diego, has no San Diego civic participation and has no broadcast experience.

CALIFORNIA WOMEN IN RADIO

558. CWIR is entitled to no integration credit. The proposed integrated principals have no binding commitment to purchase their stock in the corporate general partner. Rather, they have entered into non-interest bearing promissory notes payable at the rate of100 per month. The only collateral for these notes consists of the shares themselves. In fact, the two CWIR shareholders, Debra Deane and Ardyth Shaw, are in default on these notes. Although payments on the notes were to begin in August 1984, at the time of hearing in December 1985, Ms. Deane had made but a single payment of 100 and Ms. Shaw had made but two100 payments. Neither woman has preceived any default notice from the corporation, however, because they themselves were the only officers authorized to take any action upon a shareholder's default. Under the terms of the promisory notes, a default situation renders the unpaid balance immediately due and payable only if the defaulting parties are provided written notice of the default. Thus, by simply failing to issue a written notice of default to themselves, Ms. Deane and Ms. Shaw can absolve themselves of any obligation under the notes. Under analogous circumstances, the Review Board in *Houston Family* refused to grant integration credit and the same result must obtain here. *See Houston Family TV, Ltd.*, 101 FCC 2d 661, 668 (Rev. Bd. 1985).

559. Moreover, there is no evidence of either *de jure* or *de facto* insulation of limited partner Carol Benton, who holds a 70% equity interest in CWR. In fact, Ms. Benton has been heavily involved in the preparation and prosecution of the application. Similarly, the other limited partner, Mercedes Tondre, has also been a major force in the CWIR application. Thus, if Ms. Deane and Ms. Shaw are given credit for their proposed integration, the total integration credit to be awarded CWIR would be no more than 20%. Any credit to be awarded CWIR for Ms. Deane's and Ms. Shaw's integration would be enhanced by the fact that both women are black and residents of San Diego, although Ms. Deane's residency in San Diego is of recent origin. Credit should also be awarded for the broadcast experience of both women.

560. A moderate diversification demerit is also imposed on CWIR. Limited Partner Carol Benton has taken no steps to divest herself of the interest she has in KUIC,

Vacaville, California, as a result of her status as an income beneficiary of her family trust. In addition, that same family trust has obtained a 56.7% voting interet in KLLB/KRQK, Lompoc, California, and another family trust of which Ms. Benton is a beneficiary holds a 60% interest in the non-voting convertible stock of the licensee of KLLB/KRQK. (*Id.*) Ms. Benton has made no divestiture commitment with respect to KLLB/KRQK.

DURDEN BROADCASTING CO.

561. Durden is a general partnership owned by Earnel and June Durden. Their partnership arrangement is oral; they have never entered into a written partnership agreement (Tr. 1373). No integration credit will be awarded. Recent precedent makes clear that an oral general partnership may not receive any integration credit because it is too tenuous an organizational structure. *Payne Communications, Inc.*, 1 FCC Rcd. 1052, 1056 (Rev. Bd. 1986); *Pacific Television, Ltd.*, 2 FCC Rcd. 1101 (Rev. Bd. 1987); *Coast TV*, 2 FCC Rcd. 2982 (Rev. Bd. 1987). The failure to execute a written partnership agreement is particularly significant in light of Earnel Durden's testimony that his sons might be brought in as partners after a grant of a construction permit (Tr. 1375-1378, 1392). Assuming integration credit were awarded, Durden's proposal is qualitatively enhanced by 100% minority, 50% female and credit for their local residence since 1974. In addition, Mr. and Mrs. Durden receive some credit for civic involvement.

SIMPSON COMMUNICATIONS, LTD.

562. Simpson is not entitled to its claimed 100% quantitative integration credit. The findings establish that Simpson is not a *bona fide* limited partnership; that it has not acted like a limited partnership; that its "limited partners" have actively controlled the applicant; and that no limited partnership agreement was entered into until September, 1985, long past both the "B" cut-off date for comparative upgrading and the Integration Statement date for finalizing inchoate ownership structures. Therefore, Simpson is entitled to, at best, 20% integration credit for its proposal to integrate the 20% equity owner, Ms. Simpson, in the management of the station. Ms. Simpson is a minority woman with long-term local residence. She has no broadcast experience and only very minimal civic participation. Simpson must also be assessed a slight diversification demerit for limited partner Richard Leverrier's significant management position at a distant radio station.

KALEIDESCOPE COMMUNICATIONS COMMITTEE

563. Even if KCC is not disqualified, it is entitled to, *at best*, a four percent integration credit for a number of reasons. First, formal documents attempting to fix ownership rights and interests through stock subscriptions were not even executed until after the integration statement was filed. *Houston Family Television, Ltd.*, 58 RR 2d 1557. Second, KCC financial backer Roger Christel is in *de facto* control and has at least an 80% equity interest in the applicant. This twenty percent credit must be shared among fifteen individuals who were "members" of the unincorporated KCC association on the "B" cut-off date. Thus, the three KCC members who propose to work at the station warrant only a four percent credit.

AMIGOS DE SAN DIEGO

564. Amigos is not entitled to any integration credit given the sham nature of its limited partnership. The findings clearly demonstrate that the limited partner, which holds a 75% equity interest, has at all times been in *de facto* control of the applicant. Even if Amigos is not deemed to be a sham proposal, Amigos integration proposal must be intially reduced to 25% in light of Richard Kale's extensive involvement in the establishment and prosecution of the application. Ms. Horning's 10% general partnership interest must also be discounted in light of her dual roles as general and limited partner (she and her husband, Richard Kale, each hold a 50% interest in Kale Media Management, the limited partner). Finally, Miramontes 15% general partnership interest can not be credited since it is clear that he is a mere figurehead. Miramontes' involvement in the prosecution of Amigos' application has been *de minimis* and it is clear he will not hold a meaningful position at the station. Although Miramontes is proposed as general manager, he had no idea what his job would entail, other than supervising Ms. Horning, who would be in charge (Tr. 2669-2770), 2692).

565. If Amigos was entitled to credit for Horning, the proposal would be qualitatively enhanced by her receiving gender credit, broadcast experience credit and the very slight credit for her proposal to move to San Diego. Miramontes would receive minority, local residence (since 1967) and civic participation credit. Amigos must also be assessed a very slight diversification demerit. Amigos' limited partner, Kale Media Management, which is not properly insulated, is a media consulting firm. *See Georgia Mountain Corp.*, 57 RR 2d 1020 (Rev. Bd. 1985).

AMERICAN MEDIA GROUP

566. Despite AMG's claimed 100% quantitative integration credit, AMG is in fact entitled to *no* integration credit whatsoever. The Findings unequivocally establish that the AMG limited partnership structure is a sham; that the limited partners have been actively involved in the partnership business and in the prosecution of the AMG application; that the AMG Limited Partnership Agreement itself does not comply with the Commission's guidelines for the insulation of limited partners; that limited partner Hector Molina is the *de facto* general partner of AMG; that Hector Molina's wife, Rosalinda Molina, the purported general partner of AMG, is purely a figurehead set up to garner female and minority credit; and that Ms. Molina has done essentially nothing in either preparing or prosecuting the AMG application. Thus, based upon the line of Commission precedent from *Berryville Broadcasters Co.*, 70 FCC 2d 1 (Rev. Bd. 1978), to *KIST Corp.*, 99 FCC 2d 173 (Rev. Bd. 1984) *modified*, 58 RR 2d 1483 (1985), appeal pending sub nom., to *Louisiana Super Communications, Ltd.*, 102 FCC 2d 1293 (Rev. Bd. 1985) to *N. E. O. Broadcasting Company*, 60 RR 2d 125 (Rev. Bd. 1986) and *Chester Associates*, 60 RR 2d 1155 (Rev. Bd. 1986), AMG is entitled to no quantitative integration credit.

567. If Ms. Molina receives credit based on her ownership interest, her qualitative enhancement is limited to local residence since 1978, female gender, and minority status. Her civic involvement since 1980 has been fairly limited. She has four years of mostly part-time broadcast experience.

SAN YSIDRO COMMUNICATIONS

568. SYC receives no integration credit. The SYC limited partnership arrangement is not *bona fide*, but rather is a sham. SYC functions not as a true limited partnership but a simple association or general partnership made up of relatives, friends and business associates. The "limited partners", who control SYC, have been active in every aspect of SYC's activities from its formation to its policy and staffing decisions. Ms. Marquez, the putative SYC general partner, played little significant role in the formation, preparation and prosecution of the SYC application.

569. Neither the partnership nor the testimony of the SYC principals suggests that Ms. Marquez will function as the general partner of SYC so as to entitle SYC to 100 percent integration credit. By the terms of the partnership agreement, Ms. Marquez may be removed as general partner, at any time, at the will of the majority of the limited partners. Upon removal, her general partnership interest would be converted to a limited partnership interest. Ms. Marquez has not entered into an employment contract with SYC, nor have the terms and conditions of her employment been discussed. Ms. Marquez has no experience in managing a broadcast station and plans to hire a station manager to run the station on a day-to-day basis. The partnership agreement does not require her to work full-time as general partner, but only to devote what reasonable time is necessary to manage the partnership business. She has not agreed to remain general partner for any minimum period of time and may, with the consent of a majority of the limited partners, assign her partnership interest at any time.

570. SYC's integration claim cannot be credited. SYC must be treated as a general partnership or association and at most credited with integrating only Ms. Marquez's 20 percent ownership interest. However, the lack of any obligation to devote more than a "reasonable" amount of time to her duties to SYC, and Ms. Marquez's extensive involvement in her other business interests casts even this limited claim in great doubt. SYC's integration is enhanced by Ms. Marquez's minority status as a female Hispanic, local residence and by her limited involvement in local civic affairs.

HG COMMUNIATIONS

571. HG is not entitled to any integration credit. HG purports to be a limited partnership. However, it has never entered into a written limited partnership agreement. The two page "Certificate of Limited Partnership" submitted to the state of California is not partnership agreeement but rather a state required registration statement containing certain information as to the purported partnership. Consistent with Commission precedent, the failure to execute a limited partnership agreement compels the conclusion that no integration credit can be awarded. *Payne Communications, supra* ; *Pacific Television, supra* ; *Coast TV, supra*. This infirmity is of particular significance given the uncertainty of a prior general partnership agreement executed by Hampton and Greene which was never rescinded. It is, thus, impossible to determine whether a valid partnership agreement exists, let alone whether it is a general or limited partnership.

572. Assuming any credit were awarded, HG is, at best, entitled to no more than 50% integration credit. Although theoretically a partnership, it is clear that partner Phyllis Greene is a partner in name only. Ms. Greene has had so little to do with the prosecution of the HG application, that (1) Ms. Greene is not a signatory to the partnership bank account (which is a savings, not a checking, account); (2) the partnership's bills have been paid by checks drawn on the account of Diane Hampton, the partner who actually exercises sole control over HG; and (3) Ms. Greene left San Diego in November 1984, did not provide Ms. Hampton with a forwarding address, and did not even attempt to contact counsel until November 1985, thus leaving Ms. Hampton with complete control of the prosecution of the application throughout the discovery process. Ms. Greene did not know that the HG application had been designated for hearing until more than four months after the event. She failed to appear for deposition as scheduled in October 1985 and did not see her direct case exhibit until three days after that exhibit had been exchanged with the other parties to this proceeding. Perhaps most significantly, when questioned about her intention to move back to San Diego, she could state no more than that she "may very well go back to San Diego." (Tr. 5801). Ms. Greene's commitment to HG and to become involved in the day-to-day operation of HG's station is thus just too tenuous to be given any credit.

573. HG's 50% integration credit is enhanced by the fact that Ms. Hampton is a black female and has been a resident of San Diego area for approximately ten years. In addition, Ms. Hampton is entitled to very slight credit for her limited civic involvement and for her modest broadcast experience.

SAN DIEGO BROADCASTING

574. SDB receives no credit for Thomas Jiminez' proposed participation as general manager. Jiminez is both a general partner and limited partner in SDB. Because he is a limited partner, Jiminez is prohibited from actively participating in the affairs of the station. Section 6.03.1 of the SDB Limited Partnership Agreement specifies that no limited partner shall take part in the control, conduct or operation of the partnership (SDB Ex. 15A, p. 12). Also, the Second Amendment to the Agreement recites that a limited partner may neither "[a]ct as an employee including without limitation, as station manager —" "nor [c]ommunicate with a General Partner or the Partnership on matters pertaining to day-to-day business operation." (SDB Ex. 15C, p. 4). Under controlling Commission precedent, Jiminez must therefore be considered as a limited partner and his integration proposal cannot be credited. *Cotton Broadcasting Company*, 104 FCC 2d 473, 475 (Rev. Bd. 1986). The fact that Jiminez took a limited partnership interest because no General Partner wanted his voting power to be diminished is legally irrelevant. The fact remains that SDB is bound by the terms of its Partnership Agreement. Jiminez' 25% general partner voting interest will be discounted, leaving SDB 75% integration credit for its remaining three general partners.

575. SDB's integration credit will not be reduced further, as urged by some of the parties. It is urged that Ronald Fowler, President of Liquid Investments, Inc., which holds a 50% limited partner equity interest, has actively participated in the preparation and prosecution of SDB's application. However, the findings do not support this conclusion. There is no evidence that Fowler or Amy Stripe, his executive assistant, voted on or took part in management decisions or acted otherwise in a manner inconsistent with his limited partner status. Similarly,

there is no basis for withholding integration credit from Rose Marie Saenz, the proposed Director of Public Affairs. Although Ms. Saenz' has not been as active as the other partners, the Presiding Judge is satisfied that she has a *bona fide* ownership interest.

576. SDB receives 75% minority and 25% (Saenz) gender credit. The assertion that Ms. Saenz is not entitled to credit for her Hispanic status is unsupported. SDB also receives enhancement credit for Murillo's local residence since 1979, and moderate civic participation. Murillo's claimed credit for broadcast experience based on his position seven years ago as Administrative Assistant to the Congressman Liionel Van Deerlin is denied. No precedent has been cited for SDB's novel contention that Murillo's position constitutes broadcast experience, *i. e.*, involvement in the day-to-day operation of a broadcast facility. SDB also receives qualitative credit for Martinez' life long residence and his moderate civic participation. In this connection no precedent has been cited which would permit the Presiding Judge to reduce or award no civic participation credit because of Martinez' criminal conviction. SDB also receives credit for Ms. Saenz's local residence since 1978 and moderate civic participation.

SAN DIEGO COMTRENDS, INC.

577. ComTrends receives 85% quantitative integratioan credit. The proposed full-time integration of Richard Castillo, a 15% shareholder, cannot be credited. The *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 395 (1965) does not recognize the position of personnel director as a significant managerial position for integration purpose. Moreover, the description of Castillo's duties adduced at hearing confirms that Castillo will not perform a policy making role. Also, given the size of the applicant's proposed staff and the fact that most of his personal functions will have been taken care of before ComTrends begins its broadcast operations, Castillo's claim for full-time integration credit can not be credited.

578. ComTrends receives enhancement credit for 85% minority, and 51% female ownership. ComTrends is also entitled to the following enhancement credits: for 24% shareholder Cazares, his local residence since 1944 (with a two-year absence) and substantial civic partipation; for 10% shareholder Carlos, his local residence since 1970 (with a one-year absence) and moderate civic participation; for 41% shareholder Ms. Salinas, her local rsidence since 1971 and moderate civic participation; and for 10% shareholder Ms. Martinez, her local residence since 1971, and broadcast experience (Ms. Martinez has had no civic participation).

579. The remaining applications, discussed, *below*, will receive 100% quantitative integration credit.

CATHERINE JUANITA HENRY

580. Henry is entitled to 100% quantitative integration credit enhanced by 100% minority and female credit. Henry is entitled to only a very slight local residence credit. Ms. Henry did not move to San Diego until eight months after filing her application, and has only resided in San Diego since July, 1984. Henry is also entitled to only slight civic participation enhancement credit because her civic involvements did not begin until after the "B" cut-off date. Although Ms. Henry has been unemployed for the past six years, her prior broadcast sales experience is entitled to a moderate enhancement credit. Henry receives no diversification demerit.

ECHEVERRIA BROADCASTING CORPORATION

581. Echeverria receives 100% quantitative integration credit. Diane Clary's involvement in the preliminary stages of EBC's formation and her attendance at three meetings, detailed in the findings, was not at cross- purposes with her passive status. While Ms. Clary and her husband were responsible for initially conceiving the idea to apply for the station, this fact does not in any way lead to the conclusion that they have therefore manipulated or controlled the applicant. Indeed, the findings make clear that Ms. Clary's intent concerning her relationship to EBC from the outset was to be solely a passive investor. EBC timely amended its agreement with Ms. Clary and the debenture to issue to Ms. Clary so as to explicity reflect this intent, *i. e.*, conversion rights to nonvoting stock. Ms. Clary has not overreached her passive status. Similarly, Mr. Clary's retention as corporate counsel because of his expertise in the area of securities law in no way detracts from the legitimacy of EBC's application. As to the allegations that Ms. Clary is to be retained a a "consultant" in the future, the record reflects she will merely act as a resource for information and will not be actively involved in the conduct or control of the radio station.

582. In addition, Ben Escheverria's proposal to be integrated full- time as the general manager of EBC's proposed station will be credited. The record reflects that Echeverria intends to devote at least 40 hours per week to his employment at the station and that he will significantly reduce or, if necessary, terminate his law practice to fultill his full-time commitment. No evidence has been offered undercutting Echeverria's stated intention.

583. EBC is qualitatively enhanced by 40% female and 100% minority ownership; by Echeverria's moderate civic participation and local residence since 1968; by Ms. Hubbard's substantial civic participation and local residence since 1972; and by Ms. Real's moderate civic participation and life- long local residence. None of the proposed integrated principals have any broadcast experience. EBC receives no diversification demerit. Since Ms. Clary is properly insulated, her media interests are not attributable to EBC.

REPRESENTATIAVE MEDIA LIMITED PARTNERSHIP

584. RMLP receives 100% quantitative integration credit. The findings establish that RMLP is a *bona fide* limited partnership under the full and complete control of its General Partner. RMLP's Limited Partnership Agreement expressly prohibits the limited partner, Philip Stumpff, from participating in the control of the partnership business. It is argued, however, by Durden that because Section 3.01 of the Agreement states that the limited partner is entitled to the rights provided by the California Revised Limited Partnership Act, "effective control" resides in the limited partner. This argument ignores the facts. The findings establish that Stumpff has, in fact, exerciced no control or influence over the business of the partnership. No evidence has been presented which even suggests that Stumpff ever had any involvement in the prosecution of the RMLP application or in the business of the partnership other than purely as an investor in an arms-length

business venture. Under the express terms of the RMLP Limited Partnership Agreement, RMI, the corporate general partner has sole authority to control and manage the activities of RMLP. The findings amply demonstrate that the principals of RMLP have acted in full conformity with the terms governing the management and control of the partnership. In this connection, immediately after the Commission's decision on reconsideration of its *Ownership Attribution Rule*, 58 RR 2d 604 (1985), the Agreement was amended to incorporate the stricter limitations on participation of limited partners provided by way of the guidelines for "exempt" limited partners for ownership attribution purposes (RMLP Ex. 15B). Included in the prohibitions contained in that amendment are all of the previously unexercised "rights" which Durden claims were possessed by Stumpff under the original Limited Partnership Agreement. Thus, it remains clear that RMLP is and always has been a *bona fide* limited partnership.

585. AMG's assertion that RMLP is entitled to no quantitative integration credit because RMI's shareholders did not purchase their stock in the corporate general partner until after the Integration Statement date is equally goundless. AMG's contention is contrary to the record which reflects that on August 3, 1984, well before the "B" cut-off date, the corporation received payment for 1000 shares of stock issued at1.00 per share and that the actual stock certificates representing these 1,000 shares of stock were signed in May 1985,[86] before the June 24, 1985 Integration Statement date. Also, ignored by AMG, the fact that RMI's three shareholders have contributed substantial funds to RMLP clearly reflects the permanence of their commitment to the application.

586. AMG asserts that Ms. Concha's integration proposal is not credible due to the "extensive role played by Mr. Mireles and Ms. Leon" (AMG Concl., Para. 21). AMG's contention is not supported by the record. The record reflects that Mireles attended early meetings of the applicant group because he had gone through the FCC applications process before and was helping RMI's principals to avoid making serious errors, to help them if they didn't understand things, and to provide his opinions (Tr. 3024, 3034-3036, 3216, 3295-3297). There is no evidence indicating that Mireles acted in any sense as a controlling interest in either the organization or subsequent prosecution of RMLP's application. The record further establishes that Mireles never expressed any interest in being part of RMI, nor was there any discussion of Mireles purchasing any stock in RMI (Tr. 3024, 3034-3036, 3215- 3216, 3295-3297). In this connection, no real party-in-interest issue respecting RMLP was ever requested by AMG or any other competing application. With respect to Ms. Leon, she actively participated in the preparation and prosecution of the application during the time she was participant. Following her withdrawal prior to the "B" cut-off date, she ceased her activities on behalf of the applicant.

587. Finally, AMG continues to attempt to disparage Ms. Concha's veracity and credibility in connection with her testimony concerning her civic activities. AMG asserts Ms. Concha's testimony reveals numerous contradictions. However, as previously found by the Presiding Judge in rejecting a motion to enlarge issues on this precise matter AMG's contention that Ms. Concha's oral testimony lacked candor is without basis. *See Memorandum Opinion and Order*, FCC 86M-1333, released April 18, 1986. AMG's arguments provide no grounds for reducing Ms. Concha's quantitative integration credit.

588. RMLP is entitled to 100% minority and gender enhancement credit. RMLP also receives substantial local residence credit and moderate to substantial civic involvement credit. RMLP also receives slight enhancement for the broadcast experience of Ms. Concha. RMLP has no attributable media interests. Ms. Concha has timely promised to divest all her interest in Quetzel Bilingual Communications and sever any and all connections with it and Stations KIRS(AM) (previously KSDG(AM)) should the RMLP application be granted. In addition, Stumpff's divestiture commitment was timely. Also, Stumpff is an insulated limited partner.

TRIPLE BOGEY BROADCASTING

589. TBB is entitled to 100% quantitative integration for its proposal to integrate into the management of its proposed station, the three shareholders of its (25% equity interest) corporate general partner: Walton (52% shareholder); Ms. Widman (24% shareholder); and Ms. Phipps (24% shareholder). TBB's quantitative integration credit is enhanced by 48% minority ownership, 48% female ownership, and 100% long-term local residence. Further enhancement credit is due TBB for Walton's substantial broadcast experience and slight civic participation, and for Ms. Widman's substantial civic participation. No civic participation is claimed for Ms. Phipps. TBB receives no diversification demerit.

NEW SOUNDS OF SAN DIEGO, INC.

590. New Sounds receive 100% quantitative integration credit. Its five principals will hold recognized management level positions. New Sounds' proposal to integrate into the management of the station each of its five 20% shareholders, is entitled to 100% female ownership credit, but only 60% minority ownership enhancement credit. None of its five proposed integrated principals have any broadcast experience. All five principals are long-term residents of San Diego. Ms. Goldman has had substantial civic participation; Ms. Marquis, Ms. Ballesteros and Ms. Samson each have moderate civic participation; and Ms. Yamada, whose activities have primarily been related to her landscape employment or have been very recent, has had only slight civic participiation. New Sounds receives no diversificiation demerit. Ms. Ballesteros is one of twenty-four members of the Board of Trustees of the California State University System, licensee of a non-commerical educational TV station in San Diego. Such media involvement is inconsequential and does not warrant a diverfication demerit.

VISTA GRANDE BROADCASTING

591. VGB receives 100% quantitative integration credit. The competing parties claim that limited partner Peter Hallisay's involvement has exceeded the level appropriate for a limited partner. It is also asserted that general partner Georgina Garcia Karlsson's role in the partnership and her involvement in the application process have been insufficient to warrant crediting her proposed integration. These contentions are not supported by the record evidence or Commission precedent. The findings reflect that

Hallisay's isolated activities do not constitute material involvement and are not incongruent with his role as a passive investor. The Commission has disregarded much more extensive involvement by limited partners in affirming the *bona fides* of limited partnership applicants. *Louisiana Super Communications Limited Partnership*, 59 RR 2d 761, 766 (Rev. Bd. 1985). The record shows that the limited partnership has been under the full, exclusive, and active direction of its general partners, Ms. Robinson and Ms. Karlsson. Contrary to the assertions made, Ms. Karlsson, as well as Ms. Robinson, has been actively involved in the prosecution of VGB's application. Ms. Karlsson is a *bona fide* general partner with a legitimate interest in the partnership and her proposed integration will be credited.

592. VGB receives 100% minority and gender enhancement credit. Ms. Robinson's integration is also qualitatively enhanced by her local residence since 1970. She is also entitled to slight enhancement credit for her minimal civic participation. Ms. Robinson's management experience in the print media does not qualify under the Commission's existing guidelines for awarding broadcast experience enhancement credit. Ms. Karlsson's integration is enhanced by her local residence since 1978 and her broadcast experience. Ms. Karlsson's minimal civic involvement which did not begin until after the "A cut-off date is entitled to only very slight credit. VGB receives no diversification demerit.

DIANE OSEQUERA

593. Ms. Osequera receives 100% quantitative integration credit. The contention that Kesselman, Ms. Osequera's consultant, exercises *de facto* control over the applicant is rejected. Similar allegations were raised in a motion to enlarge issues filed by San Diego Broadcasting (SDB) and also rejected. *See Memorandum Opinion and Order*, FCC 86M-685, released February 25, 1986. As stated therein, the services provided by Kesselman appear to be similar to the type of services provided by other broadcast consultants as well as communications counsel. No evidence has been offered indicating that Kesselman is a real party-in-interest in the Osequera application.

594. Osequera is entitled to 100% female and minority enhancement credit, and to additional enhancement for Ms. Osequera's local residence since 1979, and her non-supervisory broadcast sales experience since 1981. Only the very slightest enhancement credit is due for Ms. Osequera's civic participation, most all of which has been either very recent, directly related to her employment, or with professional organizations. Osequera receives no diversification demerit.

SOLEDAD BROADCASTING COMPANY

595. Soledad is entitled to 100% quantitative integration credit for its proposal to integrate into the management of its proposed station its 51% owner Ms. Annie Gutierrez and its 49% owner Oscar Padilla. Soledad's quantitative integration credit is entitled to enhancement credit for 100% minority ownership but only 51% female ownership. The Soledad proposal is also entitled to enhancement credit for Ms. Gutierrez's local residence since August, 1981, and Padilla's local residence since 1968; moderate enhancement credit for Ms. Gutierrez's civic participation and substantial enhancement credit for Padilla's civic participation. Neither principal has any cognizable broadcast experience. Soledad receives no diversification demerit.

MARIA ELENA LASO BRADLEY

596. Bradley's 100% quantitative integration credit is entitled to 100% minority and female enhancement credit. Ms. Bradley, who has been a resident of the San Diego area since July, 1980, is entitled to local residence enhancement credit. Ms. Bradley's civic involvement is entitled to only the slightest enhancement credit because her involvements are primarily related to her employment or were begun after the "B" date in this proceeding. *See Talleyrand Broadcasting*, 103 FCC 2d 476 (Rev. Bd. 1985).

597. Vista Grande argues that Ms. Bradley should receive a diversification demerit because of her husband's employment as the Assistant General Manager and Business Manager for the Western Division of Midwest Television, Inc., the licensee of an KFMB AM/FM/TV, San Diego. However, Mr. Bradley has no ownership interest in the stations (Tr. 7233-7247) and there is therefore no interest to attribute to Ms. Bradley.

598. Vista Grande nevertheless argues that Ms. Bradley should receive a diversification demerit, relying on the FCC's cross-interest policy, which is not based exclusively on "ownership." The possible application of the cross-ownership policy to the facts presented, however, has already been fully considered and rejected in this proceeding: "The cross interest policy is inapplicable to the facts of this case . . . . there has been no showing that Mr. Bradley's duties could impinge on diversity and competition . . . . in the San Diego area in which more than 25 radio stations operate. *Memorandum Opinion and Order*, FCC 86M-1492, para. 3 (released May 1, 1986). In this respect, the fact and cases set forth in Vista Grande's proposed findings are the very same facts and cases which the Presiding Judge had before him in making this ruling. Bradley receives no diversification demerit.

COMPARATIVE SUMMARY

599. National University, Colom Communications, Harbor Communications, California Women In Radio, Durden Broadcasting Co., Simpson Communications, Ltd., Amigos De San Diego, American Media Group, San Ysidro Communications and HG Communications, receive no integration credit. Kaleidescope Communications Committee receives, at best, a four percent integration credit; San Diego Broadcasting receives 75% integration credit; and San Diego ComTrends, Inc. receives 85% quantitative integration credit; Colom Communications receives a moderate to substantial diversification demerit; California Women In Radio receives a moderate diversification demerit; and Amigos De San Diego receives a very slight diversification demerit.

600. Catherine Juanita Henry, Echeverria Broadcasting Corporation, Representative Media Limited Partnership, Triple Bogey Broadcasting, New Sounds of San Diego, Inc., Vista Grande Broadcasting, Diane Osequera, Soledad Broadcasting and Maria Elena Laso Bradley receive 100% quantitative integration credit. None suffers a diversification demerit. Representaive Media Limited Partnership's qualitative enhancement (substantial minority (100%) and female (100%) credit, substantial local residence and moderate to substantial civic involvement credit, and slight

broadcast experience credit) is superior to the other competing applicants. Henry, Vista Grande Broadcasting, and Bradley, Representative Media Limited Partnership's closest competitors, also receive substantial minority and female credit; they are inferior, however, in other enhancement areas. Triple Bogey only proposes 48% minority and female credit and is also weaker on civic participation. Walton, who holds a 48% interest in the general partner corporation has substantial broadcast experience. Broadcast experience is of minor significance. *Cannon's Point Broadcasting Company*, 93 FCC 2d 643, 653 (Rev. Bd. 1983). New Sounds' 60% minority ownership integration proposal places it behind Representative Media Limited Partnership. Also, Echeverria is comparatively inferior since it proposes 40% female credit and no broadcast experience. Soledad, similarly, proposes 51% female credit and no broadcast experience. Representative Media Limited Partnership's proposal, on a comparative basis, best serves the public interest and its application will be granted.

Accordingly, IT IS ORDERED, That unless an appeal from this Initial Decision is taken by a party or it is reviewed by the Commission on its own motion in accordance with Section 1.276 of the rules, the application of Representative Media Limited Partnership for a construction permit for a new FM station IS GRANTED; and the applications of Catherine Juanita Henry, Harbor Communications, A California Limited Partnership, California Women In Radio, A California Limited Partnership, Earnel Durden and June Durden d/b/a Durden Broadcasting Co., Simpson Communications Ltd., A Limited Partnership, National University, Evelyn Jackson, et al., d/b/a Kaliedescope Communications Committee, Echeverria Broadcasting Corporation, Amigos De San Diego, A California Limited Partnership, Triple Bogey Broadcasting, A California Limited Partnership, New Sounds of San Diego, Inc., San Diego Broadcasting, A California Limited Partnership, American Media Group, Limited Partnership, San Ysidro Communications, A Limited Partnership, HG Communications, A Limited Partnership, Colom Communications Corporation, San Diego ComTrends, Inc., Vista Grande Broadcasting, A California Limited Partnership, Diane Osequera, Soledad Broadcasting Company, and Maria Elena Laso Bradley ARE DENIED.[87]

FEDERAL COMMUNICATIONS COMMISSION

Joseph Chachkin
Administrative Law Judge

FOOTNOTES

[1] The Station KIFM-FM facilities are presently being operated pursuant to interim authorization granted in MM Docket Nos. 84-972/980 to KIFM Partners.

[2] In caption order, the twenty-four other parties who filed applications but are no longer participating in the case were as follows: Ann P. Butler; Radio Representatives, Inc.; Robert Owen Royster; Kimberly Ann Sniffen; Arden Lawrence Sniffen, Jr.; Michael J. Koleszar; Juan Jose Escribano Miro; FM Women, Inc.; Robert Agnew and Jacqueline Sachs d/b/a Agnew-Sachs Broadcasting (San Diego); Minority Broadcasters of San Diego; Esmeralda Broadcasting, Inc.; KLOK Radio, a Limited Partnership; M. Earline Stebbins and Paul Stebbbins d/b/a Stebbins Communications, a Partnership; Catherine Flynn and Edward J. Flynn d/b/a C & E Partners; Radio Onda Fronteriza, Inc.; Jeannie P. Rivkin et al., d/b/a Seacoast Broadcasting Co.; Cheryle Ann Hangartner d/b/a Axis Broadcasting Co.; Doris S. M. Yee; Tri-Com Productions, Inc.; Kerimax Ltd. of California, a Limited Partnership; Warren Broadcasting, Ltd., a Limited Partnership; Mission Valley Radio, a Limited Partnership; Louise Heifetz; Steve Virissimo and Cynthia Virissimo.

[3] Added by Memorandum Opinion and Order, FCC 86M-656, released February 21, 1986.

[4] Added by Order, FCC 86M-689, released February 25, 1986.

[5] Added by Memorandum Opinion and Order, FCC 87M-285, released February 9, 1987.

[6] The issues have been renumbered.

[7] In conformity with the agreement among the competing applicants, the Presiding Judge directed that proposed findings of fact and conclusions of law be filed by each party concerning its application as well as that application for which it had primary responsibility during the cross examination phase of the hearing.

[8] Her husband moved to her San Diego residence in January 1985 (Tr. 665, 700).

[9] Ms. Carey had no obligation to supply any funds to the partnership after grant of its application (Harbor Ex. 4, p. 5; Tr. 1042-43, 1126-27).

[10] The original agreement, which remained in force until after the "B cut-off date, also provided that the limited partners could remove the general partner for cause (Harbor Ex. 4, pp. 15-16). The revised agreement eliminated this provision, as well (Harbor Ex. 3).

[11] In approximately July 1985, after consultation with counsel, Ms. Carey employed a person to check whether there were any pending judgments or bankruptcies against the other applicants. Butler attended the meeting held between counsel and Ms. Carey to discuss the report prepared by the researcher. A decision was also made at this meeting to continue prosecution of Harbor's application. Ms. Carey is unable to state that Butler did not participate in these discussions (Tr. 1165-1167, 1181-1183, 1186-1188, 1189- 1190).

[12] Counsel provided the cost estimates. Ms. Carey did not independently verify the accuracy of the estimates (Tr. 1019).

[13] No capital account has been established for Ms. Carey (Tr. 1129).

[14] Official notice taken of the "corrected" shares appended the CWR's "Opposition to Motion to Enlarge Issues" filed January 23, 1986.

[15] *Id.*

[16] Official notice taken of the February 27, 1986 Declaration of Roger J. Metzler, Jr., filed with the Commission in response to the Presiding Judge's request for further documentation respecting CWR's financial qualifications (Tr. 7525-27).

[17] By June 24, 1985, Ms. Tondre had removed herself as President, Treasurer, and a Director of CWRI, and had become instead, a 10% limited partner.

[18] Information concerning these three professional organizations was offered and accepted into evidence as background information relating to Ms. Shaw's employment. Counsel for CWR asserted that they were not offered as evidence of civic involvement (Tr. 785).

[19] Official notice is taken of the March 3, 1986 "Assignment and Assumption Agreement" by and between Quick Broadcasting, Inc. and Crystal Broadcasting, Inc., wherein Ms. Benton attested the Agreement as Secretary of Quick Broadcasting, Inc.

See FCC File Nos. BAL-851126EP and BALH-851126EO, regarding application for Commission consent to the assignment of Stations KLLB(AM)/KRQK(FM), Lompoc, California. Official notice is also requested of Station KUIC's latest Ownership Report, FCC Form 323, on file at the FCC. Therein, Ms. Benton is listed as Vice President, Secretary, and a Director of Quick Broadcasting, Inc.

[20] Carol Benton's mother passed away sometime after the hearing testimony of the CWR principals, and subsequently was replaced as a trustee by Manley P. Caldwell, Jr. However, at all pertinent times during this proceeding, Ms. Benton's mother was a trustee of the Benton Family Trust. *See* CWR Ex. 16.

[21] Official notice of the Commission's files is taken. *See* FCC File No. BAL-851126EP and File No. BALH-851126EO.

[22] Official notice is taken of the consummation notification letter filed on March 4, 1986 in connection with this assignment of license.

[23] Official notice is also taken of the Will of Paul Benton and the Trustee's letter of July 24 and August 2, 1984 to Ms. Carol Benton, filed in this proceeding by CWR, in compliance with the Presiding Judge's directive on February 21, 1986. Tr. 7526-27.

[24] The Durdens have not executed a written partnership agreement (Tr. 1373).

[25] Mr. Durden explained that he is Offensive Backfield Coach for the San Diego Chargers football team, and that he believes that as a professional athlete he will be able to attract the interest of and communicate with the youths he visits (DBC Ex. 1, p. 3; Tr. 1382).

[26] Mr. Durden presently holds a 25% interest in Pro Broadcasters of Colorado, permittee to construct a new AM station in Commerce City, Colorado, but has pledged to divest himself of that interest should the application of DBC be granted (*Id.*).

[27] This was the first time that she saw the application, although she had discussed some aspects of it with communicationscounsel (*Id.*). However, she certified that the station would have fewer than five full-time employees, entirely relying on the fact that counsel had filled out the application to so state, and she had no input into or understanding concerning the station's proposed staffing (Tr. 1473-76).

[28] Ms. Simpson was aware that the Certificate of Partnership did not constitute a partnership agreement (Tr. 1553, 8255, 8260). The California Limited Partnership Act provides, at Section 15621(a) that "In order to form a limited partnership the partners shall execute a partnership agreement and the general partners shall execute, acknowledge and file a certificate of limited partnership" (AMG Ex. 20). The Certificate itself did not identify the limited partners, nor did it define the rights or obligations of the general and limited partners (SCI Ex. 2; Tr. 8313).

[29] KCC never functioned as a corporation before November, 1985, although there were apparently two abortive attempts to incorporate, in March of 1985 and October of 1985. *See* KCC Ex. 29, 30.

[30] Christel first became interested in investing in KCC's proposed San Diego facility in June or July 1985 when he met Roy F. Perkins, Jr., who is both the applicant's attorney and the attorney for one of Christel's acquaintances (Tr. 1638-1639). When Watts, KCC's former source of financing later withdrew, Perkins advised Christel that the investment opportunity had become available (Tr. 1639-40).

[31] Anyone, including the named principals could withdraw. Testimony of Evelyn Jackson (Tr. 1749).

[32] In the May phase of the hearing Gary Gahn testified, contrary to the written evidence of the minutes, that members of the KCC "only" voted on such matters as how much money to contribute to a Christmas party or how much money to donate to buy gifts (Tr. 8356).

[33] The only document reflecting any action or meeting of the three named principals is the minutes of the organizational meeting of the "first" board of directors of KCC, Inc. which occurred November 11, 1985, a year after the "B cut-off" date. *See* KCC Ex. 32.

[34] For his financial contribution, Watts was to receive 80% of the nonvoting stock in the applicant entity (Tr. 1805).

[35] Hawkins' role is unclear. Witnesses for KCC have labeled him a "consultant" but he was never paid for his services, according to Ms.McLemore (Tr. Id.

[36] Christel has agreed to be solely responsible for meeting the costs of filing and prosecuting the KCC application and for constructingand operating its proposed station (TBB Ex. 14, 15).

[37] Patrick Clary, a practicing attorney in Las Vegas, Nevada, and Diane Clary are principals of Quality Broadcasting Corporation, licensee of Station KUDO-FM, Las Vegas, Nevada (EBC Ex. 1, p. 2). A transfer of control of the license of Station KUDO-FM was consummated on August 1, 1986. As a result of the transfer, the Clarys no longer have an interest in Station KUDO-FM (Official notice taken of Petition for Leave to Amend filed by EBC on August 25, 1986).

[38] Ms. Clary has orally agreed to provide 37 1/2% of any expenses incurred in the prosecution of the application and will receive, in return, similar convertible subordinated debentures (Tr. 2515, 2559).

[39] At the time of Echeverria's testimony at the hearing in this proceeding on December 9 and 10, 1985, the EBC Articles of Incorporation had not been amended to reflect the authorization of non-voting stock. Echeverria testified that he anticipated that the amendment to the articles of incorporation would be accomplished within four to six weeks following his testimony. EBC filed a "Statement Pursuant to Section 1.65" of the Commission's Rules, on February 6, 1986, reporting that an Amendment to EBC's Articles of Incorporation, authorizing the issuance of nonvoting stock, was filed with the office of the Secretary of State of California on January 10, 1986. Official notice taken.

[40] Originally, both Mr. Miramontes and Ms. Horning each held 10% interests in Amigos. Mr. Miramontes' ownership interest was increased to 15% in August 1984, in an Addendum to Amigos' Limited Partnership Agreement. Mr. Miramontes could not explain why he was given an additional 5% ownership interest, other than Ms. Horning told him that he deserved it because of the amount of time and effort he had spent on the application. When asked, Mr. Miramontes could not explain what special amount of time and effort he had provided the applicant (Tr. 2676-2682; Amigos Ex. 2, Attachment A (Addendum p. 1.).

[41] In the same Addendum, Mr. Miramontes was designated the sole managing partner of Amigos. According to Amigos' Limited Partnership Agreement, the managing partner shall take actions and execute documents on behalf of the partnership, and also shall have the power to expend sums of money and incur obligations on behalf of the partnership in furtherance of its purposes, as well as borrow money in the partnership's name. Amigos Ex. 2, Attachment A (Limited Partnership Agreement pp. 6-7). Mr. Miramontes admitted that he had not executed any documents on behalf of the partnership, had not spent any money in furtherance of the partnership (other than34 for clerical supplies), nor incurred any obligations nor borrowed any money in the partnership's name. On the other hand, Ms. Horning, the other general partner, has signed the application, paid all of the

applicant's bills, and signed promissory notes on behalf of the applicant, borrowing money in the partnership's name (Tr. 2687-2690).

[42] Ms. Horning and Miramontes were introduced to each other by Kale. Prior to this application, they had never been involved in any business venture together, nor had Mr. Miramontes previously been involved in any business venture with Mr. Kale (Tr. 2569, 2875; SDB Ex. 14, p. 16).

[43] Kale stated that if Amigos were successful in obtaining a construction permit, at that juncture he would do a "financial performa" for the applicant to ascertain the exact costs of putting the station on the air. This analysis would serve as a financial blueprint for Amigos to use in constructing the station and would be completed prior to Kale Media Management providing funds to the applicant to construct and operate a station (SDB Ex. 14, pp. 57-58).

[44] Miramontes testified that he had no knowledge as to what it would cost to construct an FM broadcast station other than what Kale told him. He relied upon Kale's figures because of Kale's prior broadcast experience (Tr. 2586-87, 2600).

[45] It is intended that Kale Media Management be paid back by Amigos from either debt financing for the station construction and operation or from station operating income rather than directly by Amigos' general partners (SDB Ex. 10; Tr. 2619-20).

[46] Actually, contrary to the language of Ms. Horning's July 30, 1984, letter to Miramontes (SDB Ex. 10), the Amigos checking account did not have an initial opening balance of5000. No money was advanced to the account when Miramontes and Ms. Horning issued their promissory notes. Instead, Kale Media Management, through Ms. Horning, deposited money in the Seattle checking account on an as need basis to meet ongoing application expenses (Tr. 2921- 23).

[47] Ms. Horning described the above process as follows:

> "It [the bill] comes to me for Amigos. I submit it to Media Management. This is all from me to me -- from my left hand to my right hand. I pay the bills. I issue the notes. I issue the notes. I pay the bills." (Tr. 2896).

Ms. Horning does not speak to Miramontes each time she writes a check. She keeps him apprised generally of the applicant's financial picture (Tr. 2898).

[48] This is confirmed by Amigos, June 20, 1984, promissory note to Kale Media Management (SDB Ex. 11). As of that date, according to the testimony of Jan Horning, the Amigos Seattle checking account had not yet been opened. Therefore, it is a reasonable inference that this loan of 2000 from Kale Media Management to Amigos was for application expenses paid directly by Kale Media Management.

[49] According to Miramontes, it had not been decided whether Amigos would reimburse his out-of-the-pocket expenses in travelling to Washington, D.C. for the hearing (Tr. 2664-65). However, it was Miramontes' understanding that, if he forwarded such a bill to Ms. Horning, the partnership would be obligated to reimburse him (Tr. 2666, 2683). *See* SDB Ex. 10; Amigos Ex. 2, Attachment A at 7.

[50] Nor has Amigos described what specific management and policy-making functions Ms. Horning will fulfill, other than Miramontes' statement that she will be running the station (Amigos Ex. 2; Tr. 2670, 2692).

[51] Ms. Leon decided to pursue her previously-filed LPTV application rather than the instant radio application (AMG Ex. 10; Tr. 3232).

[52] Pursuant to the express terms of the Agreement of Limited Partnership, RMI may, in exercising its right to purchase the entire limited partnership interest in RMLP under either the put or call provisions, purchase that interest on an installment basis over a three-year period pursuant to a promissory note from RMI to Stumpff, secured by security agreement providing for a first mortgage and security interest in all of the real and personal property of the project, and a pledge of the stock of RMI (RMLP Ex. 25 and B, Section 7.01 and 7.02).

[53] Official notice is taken of FCC Public Notice 4885, released June 2, 1986, respecting the assignment of call sign KIRS to Quetzal Bilingual Communications, Inc. to replace former call sign KSDG.

[54] Walton made a timely pledge to resign his employment position in the event TBB's application is granted.

[55] Jimenez became a partner subsequent to the filing of the SDB application.

[56] On other occasions Studebaker has also represented businesses competing with Liquid Investment. At such times, Liquid Investment has been required to hire another law firm (Tr. 4888).

[57] Jiminez desired to own more than 10% of SDB (the ownership interest of the other general partners). According to him, because of the unwillingness of the general partners to allow him to hold a greater voting interest, any additional ownership had to be held in the form of a limited partnership interest (Tr. 4810-4811, 4884).

[58] Ms. Saenz has contributed1200 to the partnership, of which1000 consisted of an interest free loan from Murillo, payable on demand (Tr. 4931- 4932). She is in arrears in her payments to the partnership by 9000 (Tr. 4614). She testified that she had made arrangements to pay the money owned (Tr. 4931-4932).

[59] On November 12, 1986, SDB reported that Martinez pled guilty to one violation each of California Penal Code Sections 424.1 and 424.3. Each of the violations is a felony under Section 17(a) of the California Penal Code. The effect of these felony convictions on SDB's qualifications to be a license is discussed *infra*.

[60] The Memorandum also provided that Mrs. Molina was to receive her interest in return for her willingness to leave her current employment to serve as the general manager of AMG's station at a salary which "presumably would be less than her current salary (AMG Ex. 21B, p. 2). AMG's Limited Partnership Agreement executed in September 1985 provides that Mrs. Molina is to be paid a salary commensurate with that of general managers of other stations in San Diego (AMG Ex. 21C, p. 7).

[61] Pursuant to a procedure adopted in this proceeding, the relevant deposition testimony of Messrs. Moore and Battaglia was entered in the record in lieu of their testifying at the hearing.

[62] The Memorandum of Understanding was still operational well beyond the B Cut-Off date in this proceeding, November 15, 1984.

[63] All are related by professional or business ties. Silva, who is not a U.S. citizen is married to her sister-in-law;Garcia Sr., is her associate in the travel business. Garcia Jr., is Garcia Sr.'s son; Scheingross is counsel for travel agency and Garcia, and Ms. Marquez knows Gomez from her dealings with the International Chamber of Commerce (Tr. 5453-5454, 5537).

[64] Scheingross also conceived of the plan and drafted the documentation whereby the parties would borrow money from the LPTV corporation and lend it to the partnership, and so that they did not have to actually invest additional funds (Henry Ex. 3-4; Tr. 5371, 5398-5399, 5406). The bulk of the LPTV funds pre-

viously had been invested by Silva, who is not a U.S. citizen; Ms. Marquez' total investment in the LPTV application was1,000 (Tr. 5399, 5411, 5414-5415).

[65] In this regard, Ms. Marquez stated that the limited partners would not fire her as general manager because she would resign before they did (Tr. 5383). According to Scheingross, the limited partners would not interfere with her running the business if the station was making a profit and would expect her to resign if the station was operating at a loss (Tr. 5518-5519).

[66] SYC's application was signed by her daughter as attorney-in-fact because Ms. Marquez was leading a tour outside this country (Tr. 5357-5358).

[67] Prior to moving to the U.S., Ms. Marquez resided in Tijuana, Mexico, which lies within the predicted 1 mV/m contour of the proposed FM station (*Id.*). An FM station is not licensed, and has no responsibility, to serve areas outside of the U.S., and residence and civic activities in Mexico therefore do not constitute residence and civic activity within the service area.

[68] She also is a member of several professional organizations in Mexico, and her companies pay her dues for those as well (SYC Ex. 2, pp. 102; Tr. 5395, 5397).

[69] Ms. Hampton did not recall resubmitting the Certificate at the time of her deposition (Tr. 5695-96). The subsequent Certificate was not produced by the applicant during production of documents and was finally produced on February 3, 1986, the day scheduled for cross-examination of the HG principals (Tr. 5698-5700).

[70] In terms of financial contribution to the partnership arrangement, the State Certificate reports that each general partner will contribute5000 and, in addition, Ms. Hampton will contribute "broadcasting expertise" and Ms. Greene will contribute "legal expertise" (Tr. 5710 and 5820 and HG Ex. 6, p. 3). The agreed upon cash contribution under the April Partnership Agreement was2500 for each partner, which Ms. Hampton paid in full on April 12, 1984, and of which Ms. Greene paid1200 on April 12, 1984 (Tr. 5711 and HG Ex. 7, 2).

[71] Castillo believes that his station would have between 8-14 employees (Tr. 6447-6448).

[72] It further recites that all of ComTrends' other managers will be responsible for implementing that program (Tr. 6485).

[73] As of July 20, 1985, Vista Grande Broadcasting consisted of Mary Anita Robinson, General Partner, 50% interest in partnership and ownership, and Peter Paul Hallisay, Limited Partner, 50% interest in partnership and ownership. Agreement of Limited Partnership of Vista Grande dated July 20, 1984 (Vista Grande Ex. 7).

The First Amendment to Vista Grande's Limited Partnership Agreement dated November 12, 1984, which added one more general partner and two limited partners to Vista Grande, affected the partnership structure as follows:

> Mary Anita Robinson, General Partner, 38% interest in partnership and ownership;
>
> Georgia Garcia Karlsson, General Partner, 8% interest in partnership and ownership;
>
> Peter Paul Hallisay, Limited Partner, 46% interest in partnership and ownership;
>
> Charles and Eleanor Sisty, Limited Partner, 4% interest in partnership and ownership;
>
> Gail and Veronica Brinkworth, Limited Partner, 4% interest in partnership and ownership.

(Vista Grande Ex. 9)

The Second Amendment to Vista Grande's Limited Partnership Agreement dated February 4, 1985, added one more corporate Limited Partner, Carolyn Enterprises, Inc., to the partnership and further reduced the equity interests of Mary Anita Robinson and Peter Paul Hallisay to their present interests (Vista Grande Ex. 11).

[74] The Hearing Designation Order in this proceeding provides that, in the event Vista Grande's application is granted, the permit will be conditioned on Ms. Karlsson and Hallisay resigning their positions before initiation of program tests. *HDO* at paragraphs 103, 104.

[75] Mr. Bradley handcarried her letter (and the station's response) to and from the station at which he is employed (Tr. 7273-7276). Consent to use the tower granted no special favor to Ms. Bradley as other applicants in this proceeding have routinely received the same consent.

[76] Ms. Bradley has attended industry seminars with her husband and reviewed certain KFMB public documents available to anyone before filing her application. Ms. Bradley relied on this public information, as well as other sources, in preparing her application (Tr. 7324-7325, 7273, 7329, 7338).

[77] Mr. Bradley is responsible for the management of the television traffic department. He has no responsibility for radio traffic activities (Bradley Ex. 8).

[78] The evidence on the financial issue, insofar as it is relevant to the real party in interest issue, is also considered in the conclusions on the later issue.

[79] Ms. Simpson testified that she signed the application in Messrs. Klinedinst's and Meiser's office and that the application was in final form when she first saw it and signed it (Tr. 1453,1457). The hand-written date on the application, July 26, 1984, was inserted at a later time by Mr. Klinedinst (Tr. 1477).

[80] The "B" cut-off date in this proceeding was November 15, 1984.

[81] Ms. Simpson testified she was relying solely upon the individual resources of the four principals in certifying Simpson's ability to pursue its application and to construct and operate the proposed station (Tr. 1465) even though no financial plan has ever been prepared for the applicant nor has she ever seen financial statements of any of the other principals (Tr. 1459, 1460- 1465, 1575).

[82] The enclosure memo from communications counsel to Ms. Simpson regarding the draft of the limited partnership agreement (CWIR Ex. 19 - dated July 23, 1985) asks Ms. Simpson to have the agreement signed by Klinedinst and Meiser at "your next meeting.

[83] The handwritten date on the limited partnership agreement appears to be in the same hand as the handwritten date on Simpson's application. The handwriting was identified as that of Klinedinst (Tr. 1604).

[84] In response to discovery requests, Simpson stated under oath that it no longer had any copies of drafts of the partnership agreement (CWIR Ex. 18). Simpson did produce at hearing a letter from its counsel dated July 23, 1985, to Ms. Simpson referring to enclosure of the "final draft of the limited partnership agreement" (CWIR Ex. 19). Ms. Simpson had stated that she had signed that draft and returned it to her counsel but that this copy was apparently lost in the mail (Tr. 1490, 1551, 8315-8316).

[85] The burdens of proceeding and proof were placed on SDB. *See Memorandum Opinion and Order*, FCC 87M-285 released February 9, 1987. Although the issue calls for a determination of the effect of Martinez' conviction on SDB's qualifications to be a licensee (*See Memorandum Opinion and Order*, FCC 87M- 511, released March 9, 1987), Martinez was not called as a witness. The only evidence offered consisted of documentary evidence concerning Martinez' conviction.

[86] The record reflects that on August 3, 1984, Ms. Concha, aware that the consideration for the stock had been deposited in RMI's checking account, directed RMLP's then local counsel to issue the stock certificates (Tr. 3099). The record further reflects that counsel did not immediately proceed to issue the stock certificates as directed (Tr. 3504). In May 1985, dissatisfied with the lack of attention they were receiving, RMI's shareholders jointly determined to terminate the services of their then local counsel (Tr. 3102- 3103; 3134-3135; 3504). Also, it is clear from the record that the Promissory Notes prepared by then counsel were properly abrogated because RMI's principals always intended their contributions to be capital contributions (RMLP Ex. 152; Tr. 3125-3127; 3512).

[87] In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Section 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 87-5

In the Matter of

Amendment of §§ 22.501(g)(2) and 94.65(a)(1) of the Rules and Regulations to Re-Channel the 900 MHz Multiple Address Frequencies	RM-5206
Amendment of § 94.65(a)(1) of the Rules to Revise Footnote 3 in the Frequency Table to Make the Frequencies Available for use by any Part 94 Eligible	RM-5362
Amendment of Part 2 and §§ 94.63(d)(5) and 94.65(a)(1) Footnote 3 of the Rules to Permit Operation of Mobile Remote Meter Reading Systems on a Primary Basis on the Exclusive Power Radio Service Frequencies in the 952.3625 - 952.8375 MHz Band	RM-5178
Amendment of Part 94 of the Rules to Permit Intrasystem Communications Among Multiple Address System Master Stations	RM-5383

REPORT AND ORDER

Adopted: February 25, 1988; Released: March 14, 1988

By the Commission:

I. INTRODUCTION

1. The Commission has before it for consideration the *Notice of Proposed Rule Making* (*Notice)* in PR Docket 87-5, 2 FCC Rcd 553 (1987); and the comments and reply comments filed in response thereto.

2. The Commission initiated the *Notice* to undertake comprehensive review of the regulations and policies governing 900 MHz multiple address system (MAS) operations. In the *Notice*, we proposed to (1) reduce the standard bandwidth for MAS frequencies to 12.5 kHz; (2) make frequencies allocated to the power pool available to all Part 94 eligibles; (3) allow mobile meter reading on the 956 MHz unpaired MAS frequencies on a primary basis; (4) allow MAS master stations to communicate with one another on a frequency or frequencies used for point-to-multipoint operations; (5) establish a standard co-channel mileage separation for licensing 900 MHz MAS stations; and (6) continue to license one-way systems only on the unpaired frequencies.

3. Additionally, we asked for comments on whether we should tighten the frequency tolerance on remote transmitters operating with a 12.5 kHz bandwidth, what type of showing applicants should be required to make to justify more than the standard bandwidth, and what the standard mileage separation should be for co-channel mobile operations. Based on the record of this proceeding, and for the reasons discussed below, we adopt the rules as proposed in the *Notice*, with certain modifications. We have, in this regard, modified our reallocation, standard mileage separation, and remote unit frequency tolerance proposals.

II. BACKGROUND

4. The rules governing MAS operations were established in the early 1980's in Docket 79-18.[1] Since we had very little experience on which to base our point-to-multipoint rules at that time, the technical and procedural rules governing MAS use of these bands were based on predictions of how the service would develop. In adopting these MAS rules, therefore, we stated that should the service develop other than predicted we would revisit the matter.

5. In 1985 and 1986, we received several petitions outlining various problems in the MAS service and requesting certain rule changes.[2] These petitions raised questions about the technical and operational rules governing MAS use. Moreover, our own experience in licensing MAS operations disclosed that the service was developing differently than originally predicted. To address our concerns as well as those of the petitioners, we adopted the subject *Notice* to reexamine all our rules and policies governing 900 MHz MAS operations in the private services.

III. DEFINITIONS

6. In Docket No. 79-18 we established rules and allocated frequencies for the MAS concept which is a multipoint communications system designed to transmit from a specific point to multiple fixed surrounding points. Transmission is usually omnidirectional in pattern. Over the years, however, there has been some confusion as to what we intended these frequencies to be used for. For example, in Docket 79-18 we suggested that point-to-point communications, such as communications from a dispatch center to a central master station, should operate on existing point-to-point frequencies.[3] Based on our experience in processing MAS applications, some applicants have requested MAS frequencies when their requirements can be satisfied on point-to-point frequencies. We therefore wish to take this opportunity to clarify the definition of a multiple address system and its component parts - master and remote stations. Administrative Procedure Act (APA) notice and comment period are not required here since these are interpretations (5 U.S.C. § 553 (b)(A)).

7. *Multiple Address System*. A multiple address system is a one-way or two-way system operating on frequencies listed in § 94.65(a)(1) and consisting of a minimum of four active fixed remote stations.[4] Private multiple address systems are licensed under Part 94 of the Commission's Rules, Private Operational Fixed Microwave Service (OFS).[5] MAS frequencies are intended to satisfy point-to-multipoint needs, not communication requirements that can be satisfied by point-to-point frequencies. We will not license a system on MAS frequencies if the communications requirement can reasonably be satisfied by using point-to-point frequencies. In this regard, if a master sta-

tion is part of the MAS system, the remote stations must be scattered over the service area in such a way that more than two separate point-to-point systems would be needed to serve those remotes. Two-way multiple address systems are considered to be those designed for interrogate/response communications between a master station and associated remote stations. Communications in a multiple address system are normally between a master station and a remote station and vice versa. Communications may also be one-way from a master station to a remote station or from a remote station to one or more central receive sites.

8. *Master Station*. A master station is a station in a multiple address system that directly controls, activates, or interrogates four or more active remote stations. Master stations performing such functions may also receive transmissions from remote stations. Master stations are licensed as fixed stations except in the case of master stations in mobile systems which are licensed as mobile master stations. If licensed on paired frequencies, transmissions from a master station shall be on frequencies designated for master use.

9. *Remote Station*. A remote station is a fixed station in a multiple address system that transmits one-way to one or more central receive sites, controls a master station, or is controlled, activated, or interrogated by, and may respond to, a master station. If licensed on paired frequencies, transmissions from a remote station shall be on frequencies designated for remote use.

IV. DISCUSSION

10. Based on our analysis of the comments and replies submitted in this proceeding,[6] we adopt the package of proposals contained in the *Notice*, with some modifications. While there were many points raised in this proceeding, the central issue before us is how best to accommodate the increasing demand for 900 MHz point-to-multipoint spectrum. This issue has a number of facets which, while interrelated, we consider separately below for ease of exposition. In addition to taking steps to resolve congestion concerns, our actions here are intended to make the MAS rules more flexible so that they can accommodate new technologies and different system designs. We shall also clarify and eliminate ambiguities present in our existing rules and policies.

A. Channeling Plan

11. The standard bandwidth for MAS frequencies under our current rules is 25 kHz, with 50 kHz channels allowed upon an appropriate showing of need.[7] We proposed to reduce the standard bandwidth for MAS frequencies to 12.5 kHz. We also proposed to continue to allow wider bandwidths on a case-by-case basis. Under our flexible stacking proposal, users could obtain multiple contiguous 12.5 kHz channels up to a maximum bandwidth of 50 kHz.

12. The majority of commenters addressing this issue support our proposal to reduce the standard bandwidth while permitting licensees to obtain wider channels when needed. Several commenters supporting the bandwidth reduction concept in principle, however, also voice concern that users might not be able to obtain contiguous 12.5 kHz channels when wider bandwidths are actually needed. They suggest that the Commission consider setting aside specific blocks of channels for entities requiring bandwidths larger than 12.5 kHz.[8]

13. Connecticut Natural Gas (CNG) and Nitech, Inc. (Nitech) oppose reducing the standard bandwidth. They argue that reducing the standard bandwidth will discourage rather than encourage efficient use.[9] They recommend that channel splitting be left to the discretion of the licensee. Radscan, Inc. (Radscan), while not specifically objecting to the 12.5 kHz proposal, expresses concern about potential increase in equipment costs caused by changing to 12.5 kHz assignments.[10]

14. As we noted above, our primary objective in this proceeding is to meet the increasing demand for point-to-multipoint channels. One way to accomplish this is to enhance overall spectrum efficiency. We can do this by reducing the standard bandwidth for MAS frequencies. The comments indicate that a large number of MAS systems, especially utility systems, transmit data at a rate of 2400 bits per second (bps) or less.[11] A 12.5 kHz channel can accommodate such data rates. Using a 25 kHz channel for systems designed to transmit at these data rates is an inefficient use of the spectrum. By establishing a 12.5 kHz standard bandwidth we can accommodate two entities having such low-speed requirements; with a 25 kHz standard bandwidth only one could be satisfied. Consequently, reducing the standard bandwidth to 12.5 kHz will allow users with low data rate requirements to make more efficient use of existing MAS spectrum. The potential increase in equipment costs associated with going to 12.5 kHz does not exceed the benefits gained in spectrum efficiency.

15. While we have concluded that it is in the public interest to reduce the standard bandwidth for MAS frequencies, we do not wish to preclude entities from obtaining wider bandwidths. If higher data rates are needed we will permit entities to obtain wider bandwidths, up to 50 kHz. Just as efficiencies are gained by using only the bandwidth required, wider bandwidths offer efficiencies if there is a need for higher data rates. This flexible stacking approach takes advantage of the spectrum efficiency offered by both narrowband technology and technology capable of handling higher data rates. It also allows the end user to determine the optimum bandwidth needed.

16. We recognize the concerns of those who fear that reducing the standard bandwidth may make it more difficult to secure 25 kHz or more of contiguous spectrum. We are not convinced, however, that the problem is severe enough to justify setting aside specific 25 kHz blocks. Concerns over the availability of contiguous 12.5 kHz channels can be better handled at the frequency coordination stage. For example, coordinators, when possible, could recommend a frequency that would not preclude the applicant's ability to obtain contiguous 12.5 kHz channels. Further, setting aside specific 25 kHz blocks is a restrictive approach. Since the number of 25 kHz channels industry needs will vary from area to area, a more flexible approach is better and minimizes regulatory restraint.

17. Therefore, we adopt 12.5 kHz as the standard bandwidth for MAS frequencies. We will, however, continue to allow MAS users to be licensed for contiguous 12.5 kHz channels up to a maximum bandwidth of 50 kHz, provided a sufficient showing is made. To make the new 12.5 kHz channels compatible with existing 25 kHz channels, we adopt the interwoven assignment scheme proposed in the *Notice*. The new 12.5 kHz channels will be + 6.25 kHz from existing 25 kHz channels.[12]

18. In the *Notice* we also asked for comments on the type of showing required to obtain bandwidths in excess of 12.5 kHz. The majority of commenters addressing this issue recommend establishing a minimum bit or baud rate to justify a wider channel. For example, Microwave Data Systems, Inc. (Microwave) recommends a data rate of 2400 bps or more to qualify for a 25 kHz channel.[13] Digital supports a data rate of 4800 bps to justify the same channel.[14] Motorola, Inc. (Motorola) argues for the Commission to adopt what it refers to as a remote unit equivalence standard to justify a wider channel. It suggests we require a system to have 50 remotes to qualify for a wider channel.[15] UTC favors requiring applicants requesting a wider channel to certify that they will meet or exceed a certain baud rate.[16]

19. The American Petroleum Institute (API) and Radscan argue that the appropriate MAS bandwidth depends upon a variety of factors and that it is not easy to quantify the precise criteria that should be used to justify wider bandwidths. For example, API states that evolving technology will produce new uses for MAS frequencies and, thus, it is impossible to predict the bandwidth that these new systems will require.[17] Radscan urges us to assign wider bandwidths to any qualified applicant making such a request.[18] It suggests that if we decide to establish criteria to justify a wider channel, equipment cost and future data rates be considered.

20. We have examined this issue carefully and have decided not to establish specific criteria for justifying a wider channel. We take this position primarily because there does not appear to be any single appropriate standard on which to base such criteria. Establishing a minimum bit or baud rate as a standard to obtain a wider channel assumes that all systems transmit digital data. These frequencies, however, may be used for transmissions other than digital data. Further, because of the pace at which technology is progressing, what is an appropriate bit or baud rate today may not be so tomorrow. Tying a wider channel to the number of remotes served, as suggested by Motorola, is easier from an enforcement standpoint and would keep us out of system design. We see no direct nexus, however, between channel bandwidth and the number of remotes being served. In lieu of establishing a specific standard, we will review requests for channel bandwidths greater than 12.5 kHz on a case-by-case basis and base our decisions on the immediate needs of each applicant. The burden is on the applicant to support a wider bandwidth.[19] We will grant such requests only upon a satisfactory showing of need. This policy will promote maximum benefit from the spectrum efficiencies associated with reducing the standard bandwidth to 12.5 kHz.

21. In the *Notice* we proposed to grandfather existing 25 kHz systems indefinitely. API and UTC support the proposal.[20] They contend that requiring existing users to modify their equipment would be expensive and even wasteful in remote areas where there are no MAS spectrum shortfalls. Motorola, on the other hand, argues that grandfathering existing 25 kHz systems in perpetuity will limit the benefits of reducing the standard bandwidth. It suggests the Commission grandfather existing systems for a period of seven years.[21]

22. In the past, we have either grandfathered systems indefinitely or set a deadline for licensees to comply with new rules. We have used deadlines in cases where operation of the new system is not compatible with operation of the old. This is not the case here. Under the interwoven approach adopted, operation on the new 12.5 kHz frequencies will not substantially increase the interference potential in the existing environment *(i.e.,* 25 kHz bandwidths). Further, we see no need to require licensees operating in areas where there is little demand for MAS frequencies to purchase new equipment. Finally, there is no reason to believe that, given the option to split channels, licensees would not do so. Therefore, we will grandfather MAS stations licensed on or before May 1, 1988, indefinitely. Applicants for new stations for channel bandwidths greater than 12.5 kHz must justify the wider bandwidth.

23. As of the effective date of this *Report and Order,* licensees of an existing 25 kHz MAS channel in essence have two 12.5 kHz channels. We anticipate that current 25 kHz licensees needing additional communications capacity will split their existing channel or channels, if possible. To encourage such channel splitting and promote spectrum efficiency, we will consider a modification of an existing license (i.e., entities licensed on or before the effective date of this *Report and Order)* for a 25 kHz channel to create two separate 12.5 kHz licenses as minor under Section 1.962 of the Commission's Rules.[22] Applications by existing licensees to split channels in a manner that would result in a major modification of the license will be processed under normal application processing procedures.

B. Frequency Tolerance

24. The current MAS rules specify a frequency tolerance[23] of 1.5 parts per million (ppm) for master stations and 5 ppm for remote stations.[24] In proposing to reduce the standard bandwidth, the *Notice* discussed the issue of frequency tolerance. We did not propose any change in the current MAS tolerance requirements. We noted, however, the increased interference potential associated with maintaining a 5 ppm tolerance for remote stations operating at 12.5 kHz and asked for comments on this point.[25]

25. Microwave states that a tighter frequency tolerance for remotes is not needed.[26] The majority of the commenters addressing this issue, however, generally support tightening the tolerance because they felt continued use of 5 ppm stability would result in harmful interference if channel spacing were reduced to 12.5 kHz, seriously degrading the MAS service.[27] Most parties support tightening the tolerance to 1.5 ppm for remote stations if the standard bandwidth were reduced.[28] Central Station Electrical Protection Association (CSEPA) recommends a remote tolerance of 2.5 ppm.[29] According to the comments, requiring a tighter tolerance, whether it is 2.5 or 1.5 ppm, will produce negligible costs.[30] Digital suggests that if we tighten the tolerance, we allow 18 months before the requirement goes into effect to allow manufacturers sufficient time to develop complying equipment and sell current inventory.[31]

26. The use of a tighter tolerance will provide greater adjacent channel interference protection.[32] This protection, in turn, will provide greater spectrum efficiency by making more geographical reuse of adjacent channels possible. Adjacent channel interference protection assumes even greater significance when the same spectrum is shared by different radio services because of the coordination difficulties.[33] Analysis of the costs and benefits associated with this issue favors tightening the frequency tolerance. A tighter frequency tolerance will result in increased spectrum efficiency at little cost to the end user. Since a 1.5 ppm tolerance offers additional efficiencies, we will adopt the 1.5 ppm tolerance for remote stations operating at 12.5

kHz as supported by the majority of the commenters. Finally, there is no reason to adopt Digital's suggestion to postpone the frequency tolerance requirement for 18 months to allow sale of current inventory. The tighter tolerance adopted here is for 12.5 kHz equipment. It does not apply to equipment currently being manufacturered for 25 kHz operation. We will continue to permit such operation (25 kHz) where necessary, and manufacturers can continue to sell such equipment indefinitely.

C. Spectrum Allotment

27. Another part of our overall plan to make more efficient use of the limited MAS spectrum involves our proposal to delete the exclusive Power Radio Service allotment and put all MAS frequencies in a single general access pool. In making this proposal, however, we stated that a potential drawback of a single pool concept is that it would make utilities, which historically have required additional time to implement systems because of budgeting and regulatory restrictions, compete for available frequencies with users whose communications systems can be implemented more quickly. Consequently, while proposing a total reallocation of the power utility set-aside, we specifically solicited comments as to whether it would be preferable to release only a portion of the power allotment at this time.[34]

28. Utilities strongly oppose a wholesale reallotment at this time. UTC, in arguing against such a reallotment submits a study that shows significant recent increases in licensing activity on the power pool channels. Furthermore, according to UTC, a survey of utilities conducted in the fall of 1986 indicates that use of these MAS frequencies by utilities will continue to increase dramatically in the near future. Based on its study UTC contends that in a number of areas the demand for frequencies by utilities will exceed the twenty pairs currently allotted specifically for power use.[35] It states that utilities are depending on the continued availability of these channels for at least five more years to develop and implement vital MAS operations. Opening these frequencies up at this time, UTC argues, would, in effect, foreclose utilities from access to the MAS frequencies they need to satisfy important communication requirements. It suggests that the Commission revisit the reallocation issue in five years.[36]

29. The American Public Power Association (APPA), Public Utilities Commission of Ohio, Edison Electric Institute, and the New England Conference of Public Utilities Commissioners, Inc. also urge us not to open the power set-aside for general use at this time.[37] These commenters argue that additional time is needed to permit the technology and channel usage to develop more fully. Similarly, the American Gas Association (AGA) contends that, from the utility industry's standpoint, MAS frequencies have been available for only a relatively short period of time. It argues that the availability of utility MAS frequencies in a number of markets is not an indication that the frequencies are not needed, but an indication that equipment has been unavailable and that it takes time for utilities to justify the cost of implementing such systems.[38] In addition, API, Digital, and Microwave submitted comments against total reallocation at this time. Digital suggests that only a portion of the exclusive power pool be reallocated.[39] API, while opposing immediate reallocation, urges early access to channels by the oil and gas industry in remote areas.[40]

30. IPMA, CSEPA, the National Association of Business and Educational Radio, Inc. (NABER), General Instrument Corporation, Radscan, and National Burglar and Fire Alarm Association (NBFAA) support the proposed reallocation.[41] They argue that the frequencies in the power pool have not been extensively used and that reallocating them could help satisfy the unmet demands of general access pool users. Motorola suggests that if the Commission modifies its pool structure it should set aside channels for local government eligibles.[42] Multipoint Networks (Multipoint) argues that it is more appropriate to segregate MAS frequencies by use rather than service and suggests four separate categories; alarm and security, supervisory control and data acquisition (SCADA), point-of-sales, and high speed data.[43]

31. In determining whether a reallotment is in the public interest, we must take into account the increasing demands for additional MAS communications capacity both by utilities and by other eligibles, the spectrum efficiencies associated with a one pool concept, and the potential impact on the utility industry of having to compete for frequencies with users whose communication systems can be implemented more quickly. Putting all the MAS frequencies in a single pool could increase use of the limited MAS allocation. A single pool would, for example, help in areas of the country where all of the frequencies available in one eligibility category are assigned, but frequencies in the other are not. Entities eligible in the category where no frequencies are available might obtain a frequency under the one pool approach where they cannot under the present rules. On the other hand, the one pool approach, while conceptually attractive, raises the concern that frequencies will not be available for power utility users who, faced with budgetary and regulatory restrictions, take substantially longer to implement MAS operations. When power utilities find a need and get budgetary approval for radio facilities, frequencies may not be available due to heavy general use.

32. We have carefully weighed the arguments presented and have concluded that continuing to segregate the frequencies, at least for the near term, is the best approach. Utilities have convinced us that maintaining a separate set-aside is in the public interest. Use of frequencies in the power pool has increased significantly over the past 18 months. Further, as more and more equipment becomes available, utility use will continue to increase. Thus, continuing to segregate the power service pool at this time will provide the industry the additional time it needs to make use of the spectrum. We are convinced that opening up the power pool frequencies at this time could have a negative effect on future utility use.

33. We have balanced our concerns for utility users against the need we see for use of these channels. We conclude that for a limited period the set-aside is warranted. We have taken other actions in this docket to accommodate general access needs and, in another proceeding, we have asked for comments on making additional frequency pairs available in the 900 MHz band to satisfy the needs of users in the general access pool.[44]

34. We are still concerned over the potential for nonuse. Interpool sharing would resolve this concern. Under interpool sharing, entities eligible in one pool could apply for frequencies in the other pool if all the frequencies in the pool in which it establishes eligibility are used in a

particular area. Thus, frequencies assigned in one pool would not remain unused while needs of users in the other pool were unmet.

35. To allow utility eligibles ample opportunity to apply for channels and to implement systems in a manner best suited to their needs, we will make the interpool sharing provisions effective January 1, 1992. This approach will provide spectrum for the future growth of general access pool systems and at the same time ensure an ample complement of frequencies for utility users whose communications needs require a longer period of time to plan, fund, and implement. Furthermore, this plan strikes a balance between the needs of power and general access pool users and best provides for the continued development of the MAS service at 900 MHz.

D. Mobile Meter Reading

36. We currently permit mobile meter reading operations on the 952 and 956 MHz MAS frequencies only on a secondary basis. In the *Notice* we proposed to allow mobile operations on a primary basis on the unpaired 956 MHz frequencies and to maintain the secondary status for mobile use on the 952 MHz frequencies.

37. Utility companies addressing our mobile meter reading proposal favor this type of operation on a primary basis.[45] The Minnesota Public Utilities Commission (MPUC) also voices support for mobile meter reading.[46] It argues that removing barriers to this technology would assist in making these systems more readily available and contribute to improved utility service and reduced costs to consumers. The vast majority of commenters in favor of mobile meter reading support our proposal to allow mobile operations on a primary basis only on the unpaired MAS frequencies. Minnegasco, Inc. (Minnegasco), however, argues that primary status should also extend to the 952 MHz frequencies.[47] AGA states that 956 MHz frequencies are unavailable in a number of metropolitan areas. It urges the Commission to set aside several 956 MHz frequencies exclusively for utility use. If the 956 MHz channels are unavailable, it argues, the Commission should allow mobile use on a primary basis on the 928/952 MHz frequency pairs.[48] BGC recommends that one of the 956 MHz channels be reallocated for the exclusive use of Power Radio Service eligibles.[49]

38. As discussed in the *Notice*, we believe mobile meter reading technology can be a valuable use of spectrum. Mobile meter reading has the potential to benefit consumers by reducing billing problems, increasing the accuracy of meter readings and, ultimately, lowering utility bills. Utilities cannot be expected to put forth the capital investment necessary to make mobile meter reading succeed, however, if such systems can only be licensed on a secondary basis. We find, therefore, that mobile meter reading operations should be given primary status. We have modified footnote NG 120 in the Table of Frequency Allocations in Part 2 to allow mobile operations in this band on a primary basis.

39. We conclude that the best way to accommodate mobile meter reading services is to permit such operations to be licensed on a primary basis on unpaired MAS frequencies.[50,51] This position is consistent with our current general policy of licensing one-way systems on unpaired frequencies.[52] It also, however, presents a problem for power radio service eligibles because unpaired frequencies routinely available to power eligibles are heavily used in many major urban areas. Moreover, the rules adopted today will place additional demands on MAS unpaired spectrum because we clearly specify that future one-way operations should be licensed on unpaired frequencies. (*See* paragraphs 52-63). Therefore, to address this concern, we will allow power pool eligibles to access the unpaired 956 MHz frequencies even if paired frequencies are still available in the power pool (see paragraph 57). Further, in areas where sufficient unpaired spectrum is unavailable, we will consider a waiver of the rules to allow mobile meter reading on the 952 MHz side of a frequency pair on a primary basis. This policy should accommodate mobile meter reading requirements for the near future. As we stated above, however, unpaired frequencies are heavily used. Therefore, we intend to look for additional spectrum to satisfy future one-way point-to-multipoint requirements. We will address the issue of whether to allocate one-way channels for exclusive power use at that time. We will also consider waivers to allow power radio eligibles to use paired frequencies (both sides) for two-way mobile meter reading systems requiring the use of two MAS frequencies in the event such a need ever develops.

E. Master-to-Master Communications

40. The *Notice* proposed to allow interrelated master stations to communicate with one another on a secondary basis on the MAS frequencies they use for point-to-multipoint operations. Parties commenting on this proposal all support allowing interrelated master stations to communicate with each other to coordinate various functions. The CSEPA, however, expresses concern over a blanket authorization. It recommends that such communications be permitted only on a showing of need.[53]

41. The primary function of the MAS spectrum is to satisfy point-to-multipoint requirements, not point-to-point needs.[54] On the other hand, requiring multiple master stations operating in the same general area to employ a separate point-to-point link to coordinate activities among each other would be spectrally and economically inefficient. In addition, because MAS frequencies are assigned on an exclusive basis, the co-channel interference potential of allowing such ancillary communications is minimal. Further, it is in the operator's best interest to ensure that master-to-master communications do not interfere with its master-to-remote transmissions. Therefore, we will permit interrelated master stations that are being used to satisfy a bona fide point-to-multipoint requirement to transmit ancillary communications to one another on the MAS frequency or frequencies (952 or 956 MHz) they use for point-to-multipoint operations.[55] Requiring a showing of need, as recommended by CSEPA, is too burdensome. To ensure that entities do not use these frequencies to satisfy point-to-point needs, all such use will be on a secondary basis. Further, we will not authorize additional MAS frequencies specifically for master-to-master communications. Finally, we intend to take a hard look at systems designed for master-to-master communications where several master stations in the system employ a minimal number of remotes. We will not allow these frequencies to be used to satisfy what is actually a point-to-point requirement.

F. Licensing Issues

1. Standard Co-channel Mileage Separation

42. In the *Notice*, we noted several problems associated with our present method of basing the needed co-channel mileage separation on each master station's service area.[56] We, therefore, proposed to establish a standard co-channel mileage separation between master stations. To determine the standard separation, we assumed a 25-mile service area and a signal 20dB above threshold at the edge of the service area. We also assumed that a high quality signal should be provided to approximately ninety percent of the locations fifty percent of the time,[57] and that at the service edge a co-channel interfering signal should be 10dB less than the desired signal. We further assumed an omni-directional antenna at each remote site. In terms of mileage, this meant that two co-channel master stations had to be at least 110 miles apart.

43. A number of commenters addressed this issue. Both Digital and Southern California Gas favor retaining the current co-channel separation policy.[58] Digital argues that the proposed standard would result in increased co-channel interference. A majority of commenters addressing this issue, however, support adoption of a standard mileage separation between master stations, although there was disagreement on what the specific separation should be. Granger Associates (Granger) states that it is satisfied with the 110-mile proposal.[59] Motorola, Multipoint, and Microwave argue that the Commission should assume a directional antenna at the remote site, thereby allowing stations to be spaced closer together. They state that this assumption could reduce the separation distance to approximately 75 miles.[60] Conversely, Radscan and IPMA contend that the separation between master stations should be greater than that proposed. IPMA recommends a 125-mile co-channel separation standard,[61] while Radscan suggests the minimum distance be increased to 130 miles.[62]

44. There are two basic technical approaches available to us for assigning co-channel MAS frequencies. One is to engineer-in each station by fitting the service area of each new station in among the service areas of all existing stations. This, in effect, is how we currently handle MAS applications. The other approach is to create a regulatory assignment plan *(i.e.,* standard co-channel mileage separation) based on a typical station and apply this plan, in general, to all requests for station authorization.

45. The present method for determining the required separation between co-channel assignments is a burden on both the public and the Commission.[63] The regulatory assignment plan, on the other hand, has worked well in other bands. For example, we use a standard co-channel mileage separation in licensing specialized mobile radio (SMR) systems. In view of the increasing interest in MAS frequencies, decreasing Commission resources, and our desire to license users as quickly as possible, we find that the regulatory assignment plan approach is the best way to proceed in licensing MAS operations.

46. In determining what the specific mileage separation should be between master stations, we must concern ourselves with both communications quality and spectrum efficiency. Our goal is to provide for a high quality[64] signal throughout the service area while still maximizing spectrum reuse. In this regard, it is not practical to extend the protected service area to the most remote locations that could theoretically receive service assuming ideal propagation conditions and the use of the highest quality reception equipment. For our purposes here a service area of approximately 25 miles in radius is appropriate. Our records indicate that this is the typical service area requested for MAS operations.

47. Several commenters suggest that we assume a directional antenna for our model. By assuming a directional antenna at the remote site, we can reduce the needed separation and thereby increase co-channel reuse. Our analysis of the costs and benefits associated with this assumption favors assuming use of a directional antenna.[65] We will, therefore, modify our proposal and base our mileage separation model on the use of a directional antenna at the remote site.[66]

48. Based on our R-6602 propagation curves,[67] this high quality service (-91 dBm) can be afforded on the order of 25 miles[68] with an antenna height at the master station of 500 feet,[69] an effective radiated power (ERP) of one kilowatt (60 dBm), a net antenna receive gain of 9 dB, and a location variability factor of 12 dB.[70] To maintain this quality of service with a margin to permit solid capture, the interfering signal from the distant co-channel station should be at threshold (-111 dBm) or below for an average location, ten percent of the time. Using the R-6602 curves and assuming a remote antenna with a front-to-back ratio[71] of 8 dB, the mileage separation is approximately 75 miles. Accordingly, we will modify our proposal and adopt a co-channel[72] mileage separation standard of 75 miles for MAS frequencies.[73]

49. The *Notice* requested comments on the co-channel mileage separation necessary for mobile operations and point-to-multipoint systems.[74] Consequently, we asked for comments on the issue of an appropriate co-channel mileage separation for mobile operations. We received very few comments on this issue. CSEPA recommends that fixed assignments be allowed 20 miles distant from the mobile meter reading area of operation and that the mobile power be limited to one watt.[75] ENSCAN suggests a mobile to fixed separation of 65 miles and a maximum mobile power of 25 watts.[76] Neither party has submitted any technical support for its recommendations. ENSCAN, however, states that mobile meter reading can tolerate overlapping or concentric territories using the same frequency without compromising system performance.[77]

50. Based on the information before us, we find that a 65-mile separation between mobile and fixed operations and a 50-mile separation[78] between co-channel mobile operations are reasonable separations. Applications for mobile operation will be limited to 25 watts (ERP) and must designate a reference point (i.e., set of coordinates) at or near the center of the geographical area being served.[79] The mileage separation will be calculated from this designated point. For systems that employ both fixed and mobile operations the fixed separation (75 miles) will apply.

51. As we stated in the *Notice*, we realize that the standard separation may not be appropriate in all cases. For example, entities could employ a directional antenna at the master station, or the terrain between two systems may be such that stations or systems can be located closer together and still provide the same protection. Another example is master stations that are used to fill in "dead spots" in the primary coverage area but that are not intended to provide service 25 miles away. Consistent with past practice,[80] therefore, we will allow deviations from the standard separation when all co-channel licensees lo-

cated within the standard separation of the proposed site, or reference point for mobile or remote only operations, agree in writing to the short-spaced assignment.

2. One-way vs Two-way

52. There are currently thirty-four frequency pairs and eight unpaired frequencies available specifically for MAS operations. Our current policy requires that systems designed primarily for one-way communications, either remote-to-master or master-to-remote, be licensed on unpaired MAS frequencies.[81] Two-way operation can be licensed on either paired or unpaired frequencies. We proposed in the *Notice* to continue this policy because it will promote efficient use of the MAS spectrum. Where user has both two-way and one-way requirements, we stated that we would allow mixed systems on the frequency pairs provided the system was used primarily for two-way communications.

53. UTC, IPMA, and Digital support our proposal to continue to license MAS systems designed primarily for one-way communications on unpaired frequencies.[82] Both UTC and IPMA, however, suggest that additional one-way frequencies may be needed.[83] AGA supports that suggestion stating that there is a strong likelihood that the 956 MHz unpaired frequencies may be unavailable for use in most metropolitan areas. If the Commission decides to continue to license one-way operations only on the unpaired frequencies, AGA contends that the Commission should set aside several for exclusive utility use.[84]

54. Nitech argues that continuing our policy of licensing one-way communications systems only on unpaired frequencies would unfairly penalize certain highly efficient one-way technologies. It also is concerned that 956 MHz frequencies may not be available.[85] Nitech contends that one-way systems operating on paired frequencies need not waste a channel; Nitech states that both frequencies in the pair, 928 and 959 MHz, could be used for one-way operations.[86]

55. Since there are only a limited number of MAS frequency pairs available and they are in high demand, we conclude that the public interest would not be served by routinely licensing MAS systems primarily designed for one-way communications on the paired frequencies. The MAS frequency pairs were intended specifically to satisfy two-way MAS communication requirements, and there is a great demand by two-way operators.[87] Using a frequency pair for two one-way systems reduces the number of frequencies available to satisfy demonstrated two-way requirements.

56. While we find that our current policy of licensing MAS systems primarily designed for one-way communications on the unpaired frequencies will best serve the public interest, we realize that present unpaired spectrum may not be sufficient to meet all one-way MAS demands. There are currently only eight 956 MHz frequencies available for one-way for MAS operations. As pointed out in the comments, most of these 956 MHz frequencies are already assigned in a number of major metropolitan areas. Thus, while moving one-way operations to the unpaired frequencies is attractive from a spectrum efficiency standpoint, in reality there may not be many unpaired frequencies available in the larger metropolitan areas. Our 12.5 kHz assignment plan should provide some relief. In addition, unpaired common carrier spectrum recently became available for shared use by Part 94 users.[88] Consistent with the policy adopted for one-way mobile meter reading operations, we will consider a waiver of the rules to allow one-way operations on paired frequencies in areas where the unpaired spectrum available is not sufficient to meet the applicant's communication requirements. In addition to the usual justification, such waiver requests must include a list of any unpaired frequencies available at the proposed location and a showing why such frequencies cannot be used. Further, all such requests must include a showing that the proposed operation meets the co-channel separation criteria. [89]

57. We also note that, under our current policies, unpaired 956 MHz frequencies are available to Power Radio Service eligibles only if all frequencies in the power pool are used in the licensee's proposed area of operation. Power pool eligibles, therefore, proposing a one-way MAS operation in areas where paired power pool spectrum is available could not be licensed on these 956 MHz frequencies. To eliminate this disparate situation we will allow Power Radio Service eligibles access to unpaired MAS frequencies even if paired frequencies are still available in the power pool. In this way, power radio eligibles' access to unpaired spectrum will not be dependent on the demand or use of unrelated two-way services.

58. We also raised the issue of mixed one-way and two-way systems in our *Notice*. Under our present policy if a licensee has four or more two-way remotes it can have any number of one-way remotes. In the *Notice* we proposed to change this policy: we stated that we would allow mixed one-way and two-way operations on the frequency pairs provided the pair is used primarily to satisfy a two-way requirement. To determine whether a system is classified as primarily two-way we proposed to look at how most of the remotes would be used.[90] Under this definition, if more than fifty percent of the total number of remotes in the system are two-way, the system would be classified as two-way.

59. Radscan recommends that the Commission reconsider its proposal concerning mixed systems. It argues that the Commission's analysis of the one-way/two-way issue is illogical and that the present intermixing policy should be maintained. To support its position, Radscan presents two separate arguments. The first deals with interference. According to Radscan, the Commission's assumption that the unpaired MAS frequencies can be used for one-way remote-to-master (uplink) communications is flawed because the frequencies can also be used for one-way master-to-remote (downlink) transmissions.[91] It contends that if two one-way systems, one downlink and one uplink, are operating on adjacent channels at the same site it is nearly impossible for the uplink receiver to reject the adjacent channel downlink signal. Radscan concludes that, as a practical matter, the 956 MHz frequencies cannot be used for one-way remote-to-master operations. Second, Radscan maintains that "the Commission's proposed change would require subjective regulatory intrusions, which are likely to lead to arbitrary and irrational results."[92]

60. We agree with Radscan that receiver desensitization[93] is a concern when an uplink and a downlink system are operating on adjacent channels in close proximity to one another. In determining the overall interference potential, however, the likelihood of interference actually occuring must be taken into account. We believe the probability of such interference occurring in this case is minimal. For interference to occur users must be at the same location and operating on adjacent channels. Fur-

ther, interference can be minimized by proper frequency coordination.[94] For these reasons we decline to impose any restrictions here. If such problems do develop we can apply our first-in-time policy.[95]

61. We have concluded above that licensing systems designed primarily for one-way communications on the paired MAS frequencies should be done only on a waiver basis. At the same time, however, precluding ancillary one-way communications on a two-way system would be contrary to the public interest since users needing such communication capabilities would have to have two different systems employing different frequencies -- an inefficient use of the spectrum.

62. At issue here is whether to allow ancillary one-way communications on frequency pairs and how to do so without negating our effort to put systems designed primarily for one-way use on unpaired frequencies. We want to ensure that the frequency pair is first being used to satisfy genuine two-way requirements. One option to resolve this problem would be to increase the number of two-way remotes required to qualify for a frequency pair as suggested by Digital.[96] By taking this approach, however, we may be precluding entities with a genuine two-way (interrogate/response) point-to-multipoint requirement but only needing a small number of remotes from using MAS pairs. Another option would be to take the approach proposed in the NPRM and look at how most of the remotes in the system are used. This approach would resolve our concern over entities employing four token two-way remotes and hundreds of one-way remotes. At the same time, however, it would preclude a system of, for example, fifty two-way and sixty one-way remotes. Such a system might well be satisfying a genuine two-way requirement regardless of the fact that there are more one-way remotes than two-ways.

63. We have examined this issue carefully and find that allowing ancillary one-way communications on a frequency pair will further our objective of increasing spectrum efficiency. We will, therefore, allow mixed systems *(i.e.,* two-way and ancillary one-way communications) on frequency pairs provided the frequency pair is being used to satisfy a bona fide operational requirement for two-way (interrogate/response) communications. The determination as to what constitutes ancillary communications will be made on a case-by-case basis. We may require the applicant to provide an additional showing in cases where a large number of one-way remotes and only minimal number of two-way remotes are being proposed. While we intend to base our decisions primarily on how most of the remotes in the system are used, other factors may also be taken into consideration in reaching a decision. We believe such a policy is necessary to ensure that the frequency pairs are used to satisfy bona fide two-way requirements.

G. Miscellaneous Issues

1. Emission Mask

64. Several parties express concern over applying the current emission mask to the new 12.5 kHz channels.[97] For example, Microwave states that the Part 94 out-of-band emission rules were designed for traditional wideband digital microwave systems and did not anticipate systems with 12.5 kHz bandwidths.[98] It recommends that a 300 Hz measurement bandwidth, rather than the current 4 kHz band, be used for 12.5 kHz and 25 kHz systems. Motorola also voices concern over applying the present out-of-band emission rules to narrowband MAS operations. It argues that the present emission mask discriminates against digital modulation on narrowband channels. It, like Microwave, suggests that we apply the emission control rules put forth in Part 90 to MAS operations.[99] Radscan, in its reply comments, also states that the emission control requirements may be inappropriate.[100] Multipoint, on the other hand, argues that the current emission mask should not be changed.

65. We have considered the comments on this issue and find that a change in the emission mask for digital MAS operations is in order. The present emission control rules for digital systems are designed to deal with wideband systems. Applying these rules to narrowband systems imposes additional attenuation requirements. The determining factor for interference potential should be the power emitted in the adjacent channels and not the modulation technique used. Therefore, we will adopt a new emission mask for MAS digital data systems. As suggested in the comments we will use the emission control rules put forth in Part 90. *See* Section 94.71 in Appendix B.

2. Part 22

66. Currently, MAS frequencies in the general access pool are available for shared use by Part 22 eligibles if all frequencies listed under section 22.501(g)(1)[101] are exhausted in a given area. We have adopted in this item rules establishing a 12.5 kHz standard bandwidth. We shall, therefore, amend Part 22 to reflect this change. Frequencies in the power pool will be available to Part 22 users on January 1, 1992.

V. PAPERWORK REDUCTION ACT STATEMENT

67. The action herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

VI. FINAL REGULATORY FLEXIBILITY ANALYSIS

Objectives

68. The Commission is revising its rules governing 900 MHz MAS operations in order to make more efficient use of the spectrum, accommodate continuing growth, increase flexibility, and reduce the current administrative burden upon both the Commission and the end user.

Description, potential impact, and number of small entities affected

69. We did not receive any comments that specifically addressed our Initial Regulatory Flexibility Analysis. However, we feel that this action may affect both small and large businesses. While it may make the acquisition of contiguous 12.5 kHz channels slightly more difficult, it will promote spectrum efficiency at little cost to the end user as well as make additional frequencies available. Further it will simplify application filing and processing procedures. Therefore, on balance, we believe the favorable impacts outweigh those that may be unfavorable.

Reporting, recordkeeping and other compliance requirements

70. No new requirements will be imposed upon MAS licensees.

Federal rules that overlap, duplicate or conflict with this rule

71. There are no federal rules that overlap. duplicate or conflict with these changes.

Significant alternatives considered and rejected

72. The Commission reviewed and considered the comments and reply coments to its proposal. The Commission adopted a number of alternatives presented by the commenters. For example, it reduced the co-channel separation requirement, tightened the frequency tolerance, and adopted an interpool sharing arrangement. We anticipate that our decisions in these matters will have a favorable impact on small businesses and entities because it will make additional spectrum available and allow new services. Also, our decisions to allow mobile meter reading on a primary basis, adopt a 12.5 kHz standard band plan, and grandfather existing users indefinitely will benefit small and large users.

VII. ORDERING CLAUSES

73. Accordingly, IT IS ORDERED, that pursuant to Section 4(e) and 303(r) of the Communications Act of 1934, as amended, Parts 2, 22, and 94 of the Commission's Rules are AMENDED effective **April 28, 1988,** as set forth in Appendix B.

74. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

APPENDIX A

Comments

Alagasco, Inc.
American Gas Association
American Petroleum Association
American Public Power Association
American Water Works Service Co., Inc.
Arkansas Oklahoma Gas Corporation
Atlanta Gas Light Company
Baltimore Gas and Electric Company
Bay State Gas Company
Beater Utilities, Inc.
Boston Edison Company
Boston Gas Company
Brooklyn Union Gas Company
Carolina Power and Light Company
Cedar Falls Utilities
CENTEL
Central Station Electrical Protection Association
Chesapeake Utilities Corporation
Christian County Water District
City Public Service
Commonwealth Gas Company
Commonwealth Edison
Connecticut Natural Gas Corporation
Dairyland Power Cooperative
Delta - Montrose Electric Association
Delta Natural Gas Company, Inc.
Digital Radio Networks, Inc.
Christopher J. Dodd
East Kentucky Power Cooperative, Inc.
East Ohio Gas Company
Edison Electric Institute
Edison Sault Electric Company
ENSCAN, Inc.
Ben Erdreich
Fitchburg Gas and Electric Light Company
Ronnie Flippo
Frontier Power Company
General Instrument Corporation
Granger Associates
Claude Harris
Illinois Power Company
Indianapolis Power and Light Company
International Planned Music Association
Jacksonville Surburban Utilities Corporation
Jersey Central Power and Light Company
Walter B. Jones
Kansas Power and Light Company
Barbara B. Kennelly
Lake Region Co-op Electric Association
H. Martin Lancaster
Lone Star Gas Company
Louisville Gas and Electric Company
Memphis Light, Gas and Water Division
Microwave Data Systems, Inc.
Middle South Utilities, Inc.
Middle Tennessee Natural Gas Utility District
Minnegasco, Inc.
Minnesota Public Utilities Commission
Minnkota Power Cooperative, Inc.
Mississippi Power and Light Company.
Mississippi Valley Gas Company
Missouri Public Service
Mobile Gas Service Corporation
Mor-gran-sou Electric Cooperative, Inc.
Motorola, Inc.
Multipoint Networks
National Association of Business and Educational Radio, Inc.
National Association of Regulatory Utility Commissioners
New England Conference of Public Utilities

Commissioners
NITECH, Inc.
North American Electric Reliability Council
North Carolina Electric Membership Corporation
Northern Illinois Gas
Northern States Power Company
Northwest Natural Gas
Oconee Electric Membership Corporation
Ohio Public Utilities Commission
Oliver-Mercer Electric Cooperative, Inc.
Owen County Rural Electric Cooperative Corporation
Pacific Gas and Electric Company
Peoples Gas Light and Coke Company
Peoples Natural Gas Company
Philadelphia Electric Company
Potomac Electric Power Company
Public Service Company of Oklahoma
Public Service Electric and Gas Company
Radscan, Inc.
Rochester Gas and Electric Corporation
Charlie Rose
Sacramento Municipal Utility District
Salt River Project
San Bernadino Valley Municipal Water District
Sierra Pacific Power Company
South Carolina Electric and Gas Company
Southern California Gas Company
Southern Electric
Suffolk County Water Authority
Tell City Electric Department
Texas Gas Association
Transok, Inc.
TU Electric
Upper Peninsula Power Company
Utilities Telecommunications Council
Weakley County Municipal Electric System
Lowell Weicker, Jr.
Williams Electric Cooperative, Inc.
Wisconsin Gas
Wisconsin Fuel and Light Company
Vermont Gas Systems, Inc.
Virginia Power
VOAM Electric Cooperative, Inc.

Reply Comments
American Gas Association
American Petroleum Institute
Central Station Electrical Protection Association
Connecticut Natural Gas Corporation
Digital Radio Networks, Inc.
ENSCAN
Granger Associates
Massachusetts State Lottery Commission
Motorola
Multipoint Networks
National Burglar and Fire Alarm Association
Nitech
Radscan
Utilities Telecommunications Council

APPENDIX B

Parts 2, 22, and 94 of the Commission's Rules are amended as follows:

A. Part 2 - Frequency Allocations and Radio Treaty Matters; General Rules and Regulations.

1. The authority citation for Part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 2.106 is amended by revising footnote NG120 to read as follows:

§ 2.106 Table of Frequency Allocations

* * * * *

Non-Government (NG) Footnotes

NG120 Frequencies in the 928-960 MHz band may be assigned for multiple address systems and mobile operations on a primary basis as specified in Part 94.

* * * * *

B. Part 22 - Public Mobile Service

1. The Authority citation for Part 22 continues to read as follows:

Authority: Sections 4, 303, 48 STAT., as amended, 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.501 is amended by revising paragraph (g)(2).

§ 22.501 Frequencies

* * * * * *

(g)(1) ***

(2) Upon an affirmative showing that frequencies shown in § 22.501(g)(1) are not available, frequencies listed in Tables 1 and 2 of § 94.65(a)(1) (Private Operational-Fixed Microwave Service) may be authorized for common carrier point-to-multipoint operations. After January 1, 1992, frequencies available in Tables 3 and 4 of § 94.65(a)(1) also may be used for such operations. Operations on any of these frequencies shall be subject to the requirements of Part 94.

* * * * *

C. Part 94 - Private Operational-Fixed Microwave Service

1. The authority citation for Part 94 continues to read as follows:

Authority: Sections 4, 303, 48 STAT., as amended, 1066, 1082, 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 94.3 is amended by revising the definitions of Master station, Multiple address, and Remote station.

§ 94.3 Definitions

* * * * *

Master station. A station in a multiple address radio system that controls, activates, or interrogates four or more remote stations. Master stations performing such functions may also receive transmissions from remote stations.

* * * * *

Multiple address system (MAS). A multiple address radio system is a point-to-multipoint communications system, either two-way or one-way, utilizing frequencies listed in § 94.65(a)(1) and serving a minimum of four remote stations. If a master station is part of the multiple address system, the remote stations must be scattered over the service area in such a way that more than two separate point-to-point systems would be needed to serve those remotes.

* * * * *

Remote station. A fixed station in a multiple address radio system that transmits one-way to one or more central receive sites, controls a master station, or is controlled, activated, or interrogated by, and may respond to, a master station.

* * * * *

3. Section 94.15 is amended by revising paragraph (g) to read as follows:

§ 94.15 Policy governing the assignment of frequencies.

* * * * *

(g) Except as provided in paragraph (h) of this section, applicants requiring multiple transmit frequencies employed on separate paths from a single station location will not normally be authorized more than four of the transmit frequencies available in the band. Further, master and remote stations using frequencies listed in § 94.65(a)(1) will not normally be authorized more than four (12.5 KHz) frequencies or frequency pairs.

* * * * *

4. Section 94.25 is amended by revising paragraph (j) to read as follows:

§ 94.25 Filing of applications.

* * * * *

(j) For stations operating on frequencies listed in § 94.65(a)(1), applications may include any number of remote stations in a single application, but must specify the geographic service area of the applicant in which these remote stations will be located. A separate application must be filed for each fixed master station. Applications for mobile operations or for systems employing only remote stations must designate a reference point (set of coordinates) at or near the center of the area being served.

5. Section 94.31 is amended by adding a new paragraph (k) to read as follows:

§ 94.31 Supplemental information to be submitted with application.

* * * * *

(k) For applications involving fixed multiple address system master stations, the antenna height above average terrain (HAAT). *See* Section 90.309 for determining HAAT.

6. Section 94.63 is amended by revising paragraphs (d)(4)(i) and (d)(5) to read as follows:

§ 94.63 Interference protection criteria for operational fixed stations.

* * * * *

(d)***

(4)***

(i) For multiple address stations in the 928-960 MHz band a statement that the proposed system complies with the following co-channel separations from all existing stations and pending applications.

Fixed-to-fixed	120.7 Km (75 miles)
Fixed-to-mobile	104.6 Km (65 miles)
Mobile-to-mobile	80.5 Km (50 miles)

Multiple address systems employing only remote stations will be treated as mobile for the purposes of determining the appropriate separation. For mobile operation, the mileage is measured from the reference point specified on the license application.

* * * * *

(5) Multiple address frequencies in the 956 MHz band may be assigned for use by mobile master stations on a primary basis. Multiple address frequencies in the 952 MHz band may be assigned for use by mobile master stations on a case-by-case basis. Mobile operation in the 952 MHz band shall be on a secondary basis to fixed operations.

* * * * *

7. Section 94.65 is amended by revising paragraph (a)(1); inserting a new introductory heading (a)(2); renumbering current paragraphs (a)(2), (a)(3) and (a)(4) to read (a)(2)(i), (a)(2)(ii), and (a)(2)(iii), respectively, and changing the heading in each.

§ 94.65 Frequencies

* * * * *

(a) 928-960 MHz.

(1) Multiple Address System frequencies Multiple address system (MAS) frequencies are available for the point-to- multipoint transmission of a licensee's products or services, excluding video entertainment material, to a licensee's customer or for its own internal communications. The paired frequencies listed in this section shall be used for two-way interrogate/response communications between a master station and remote stations. Each master station operating on one of the paired channels is required to serve a minimum of four separate active remote stations. Ancillary one-way communications on paired frequencies are permitted on a case-by-case basis. Ancillary communications between interrelated master stations are permitted on a secondary basis. The normal bandwidth assigned will be 12.5 kHz. Upon adequate justification, however, additional contiguous channels may be authorized to provide up to a 50 kHz bandwidth. Tables 2, 4, and 6 list frequencies with 25 kHz bandwidth. When licensed for a larger bandwidth, the system still is required to use equipment which meets the +0.00015 percent tolerance requirement. (*See* § 94.67(a)). Systems licensed as of May 1, 1988, operating on the 25 kHz channels listed in these tables will be grandfathered indefintely.

(i) General Access Pool: Frequencies listed in this paragraph are available to all persons eligible under Part 94 for use in multiple address radio systems. Except as noted, however, the frequencies may be used by eligibles in the Power Radio Service only if the freqencies in Section 94.65(a)(1)(ii) are exhausted in the particular geographic area. The frequencies are also available for shared use by Part 22 Public Land Mobile Service users if frequencies listed in § 22.501(g) are exhausted in the particular geographic area. Applications for use of these frequencies under Part 22 shall be subject to Part 94 requirements.

TABLE 1 PAIRED FREQUENCIES (MHZ)
(12.5 kHz bandwidth)

Remote transmit	Master transmit
928.00625	952.00625
.01875	.01875
.03125	.03125
.04375	.04375
.05625	.05625
.06875	.06875
.08125	.08125
.09375	.09375
.10625	.10625
.11875	.11875
.13125	.13125
.14375	.14375
.15625	.15625
.16875	.16875
.18125	.18125
.19375	.19375
.20625	.20625
.21875	.21875
.23125	.23125
.24375	.24375
.25625	.25625
.26875	.26875
.28125	.28125
.29375	.29375
.30625	.30625
.31875	.31875
.33125	.33125
928.34375	952.34375

UNPAIRED FREQUENCIES (MHZ)[1]
(12.5 kHz bandwidth)

956.25625	956.33125	956.39375
956.26875	956.34375	956.40625
956.28125	956.35625	956.41875
956.29375	956.36875	956.43125
956.30625	956.38125	956.44375
956.31875		

TABLE 2 PAIRED FREQUENCIES (MHZ)
(25 kHz bandwidth)

Remote transmit	Master transmit
928.0125	952.0125
.0375	.0375
.0625	.0625
.0875	.0875
.1125	.1125
.1375	.1375
.1625	.1625
.1875	.1875
.2125	.2125
.2375	.2375
.2625	.2625
.2875	.2875
.3125	.3125
928.3375	952.3375

UNPAIRED FREQUENCIES (MHZ)[1]
(25 kHz bandwidth)

956.2625	956.3375	956.4125
956.2875	956.3625	956.4375
956.3125	956.3875	

[1] Available to power eligibles regardless of whether frequencies in the power pool are exhausted.

(ii) Power Pool: Frequencies listed in this paragraph are available to persons eligible under § 90.63 for licensing in the Power Radio Service for use in multiple address radio systems. After January 1, 1992, the frequencies are also available for use by general access pool users and Part 22 Public Land Mobile Service users (§ 22.501(g)) provided frequencies listed in their respective pools are exhausted in the particular geographic area. Applications for use of these frequencies under Part 22 shall be subject to part 94 requirements.

TABLE 3 PAIRED FREQUENCIES (MHZ)
(12.5 kHz bandwidth)

Remote Transmit	Master Transmit
928.35625	952.35625
.36875	.36875
.38125	.38125
.39375	.39375
.40625	.40625
.41875	.41875
.43125	.43125
.44375	.44375
.45625	.45625
.46875	.46875
.48125	.48125
.49375	.49375
.50625	.50625
.51875	.51875
.53125	.53125
.54375	.54375
.55625	.55625
.56875	.56875
.58125	.58125
.59375	.59375
.60625	.60625
.61875	.61875
.63125	.63125
.64375	.64375
.65625	.65625
.66875	.66875
.68125	.68125
.69375	.69375
.70625	.70625
.71875	.71875
.73125	.73125
.74375	.74375
.75625	.75625
.76875	.76875
.78125	.78125
.79375	.79375
.80625	.80625
.81875	.81875
.83125	.83125
928.84375	952.84375

Table 4 Paired Frequencies (MHz)
(25 kHz bandwidth)

Remote transmit	Master transmit
928.3625	952.3625
.3875	.3875
.4125	.4125
.4375	.4375
.4625	.4625
.4875	.4875
.5125	.5125
.5375	.5375
.5625	.5625
.5875	.5875
.6125	.6125
.6375	.6375
.6625	.6625
.6875	.6875
.7125	.7125
.7375	.7375
.7625	.7625
.7875	.7875
.8125	.8125
928.8375	952.8375

(iii) Frequencies listed in this paragraph are available for shared use by general access pool users for multiple address operations only if frequencies listed in paragraph (i) of this section are exhausted in the particular geographic area. The frequencies are also available to eligibles in the power pool provided there are no other frequencies available for the type of operation contemplated. The frequencies in this pool may be assigned for paired or unpaired operation. If paired, the corresponding lower frequency shall be for remote unit use. Applications for these frequencies shall be subject to the conditions outlined in § 22.27 of this chapter.

Table 5 Public Mobile Service Category Frequencies (MHz)
12.5 kHz bandwidth

928.85625	959.85625
.86875	.86875
.88125	.88125
.89375	.89375
.90625	.90625
.91875	.91875
.93125	.93125
.94375	.94375
.95625	.95625
.96875	.96875
.98125	.98125
928.99375	959.99375

Table 6 Public Mobile Service Category Frequencies (MHz)
25 kHz bandwidth

928.8625	959.8625
928.8875	959.8875
928.9125	959.9125
928.9375	959.9375
928.9625	959.9625
928.9875	959.9875

(iv) Equivalent power and antenna heights for multiple address master stations

Antenna height (AAT) in feet	Maximum effective radiated power Watts	dBm
Above 1,000	200	53
901-1,000	250	54
801-900	315	55
701-800	400	56
601-700	500	57
501-600	630	58
500 and below	1,000	60

For mobile operations the maximum ERP is 25 watts (44 dBm).

* * * * *

(2) Fixed point-to-point frequencies
(i) Table 7 (50 kHz bandwidth)

* * * * *

(ii) Table 8 (100 kHz bandwidth)

* * * * *

(iii) Table 9 (200 kHz bandwidth)

* * * * *

8. Section 94.67 is amended by revising footnote 5 and adding a new footnote 9 to read as follows:

§ 94.67 Frequency tolerance.

* * * * *

Frequency band (MHz)	Tolerance as percentage of assigned frequency
928-929	0.0005[9]
952-960	(1) (5)

* *

[5] For point-to-point systems, with a channel greater than or equal to 50 kHz bandwidth, .0005; for multiple address master stations, regardless of bandwidth, .00015; for multiple address remote stations with 12.5 kHz bandwidths, .00015; for multiple address remote staions with channels greater than 12.5 kHz bandwidth, .0005.

* * * * *

[9] For remote stations with 12.5 kHz bandwidth, the tolerance is + .00015.

* * * * *

9. Section 94.71 is amended by adding a new bandwidth to the frequency bands 928-929 and 952-960, and revising footnotes 6 and 7 in paragraph (b) and in paragraph (c) revising (2)(i), adding a new (3) and (4) and renumbering the current subparagraph (3) to (5) to read as follows:

§ 94.71 Emission and bandwidth limitations.

(a) ***

(b) ***

Frequency band (MHz)	Maximum authorized bandwidth
928-929	12.5, 25 kHz[17]
952-960	12.5, 25, 50, 100, 200 kHz[16]

* *

[6] A 12.5 bandwidth applies only to frequencies listed § 94.65(a)(1).

[7] For frequencies listed in § 94.65(a)(1), consideration will be given on a case-by-case basis to authorizing bandwidths up to 50 kHz.

(c) ***

(1) ***

(2) ***

(i) Except as noted in subparagraph (3), for operating frequencies below 15 GHz, in any 4 kHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels: $A=35+0.8(P-50)+10\ \log10B$. (Attenuation greater than 80 decibels is not required.)

Where:
A=attenuation (in decibels) below the mean output power level
P=percent removed from the carrier frequency
B=authorized bandwidth in MHz.

* * * * *

(3) When using transmissions employing digital modulation techniques on the 900 MHz multiple address frequencies with a 12.5 kHz bandwidth, the power of any emission shall be attenuated below the unmodulated carrier power of the transmitter (P) in accordance will the following schedule:

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in kHz) of more than 2.5 kHz up to and including 6.25 kHz: At least 53 log10 (fd/2.5) decibels:

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in kHz) of more than 6.25 kHz up to and including 9.5 kHz: At least 103 log10 (fd/3.9) decibels;

(iii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in kHz) of more than 9.5 kHz up to and including 15 kHz: At least 157 log10 (fd/5.3) decibels;

(iv) On any frequency removed from the center of the authorized bandwidth by a displacement frequency greater than 15 kHz: At least 50 plus 10 log10(P) or 70 decibels, whichever is the lesser attenuation.

(4) When using transmissions employing digital modulation techniques on the 900 MHz multiple address frequencies with a bandwidth greater than 12.5 kHz, the power of any emission shall be attenuated below the unmodulated carrier power of the transmitter (P) in accordance with the following schedule;

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in kHz) of more than 5 kHz up to and including 10 kHz: At least 83 log10 (fd/5) decibels;

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in kHz) of more than 10 kHz up to and including 250 percent of the authorized bandwidth: At least 116 log10 (fd/6.1) decibels or 50 plus 10log10(P) or 70 decibels, whichever is the lesser attenuation;

(iii) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: At least 43 plus 10 log10(output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

(5) For Digital Transmission System channels

* * * * *

10. Section 94.73 (a)(2) is amended by revising footnotes 1 and 3 to read as follows:

94.73 Power limitations.

(a) ***

(i) ***

(2) ***

[1] For multiple address operations see Section 94.65(a)(1)(iv).

[2] ***

[3] For multiple address operations see Section 94.65(a)(1)(iv). When an omnidirectional transmitting antenna is authorized in the 2150-2160 MHz band, the maximum power shall be 60dBm.

* * * * *

FOOTNOTES

[1] *See* Report and Order, SS Docket No. 79-18, 46 Fed. Reg. 9,950 (1981), 48 RR 2d 1183 and Second Report and Order, SS Docket 79-18, 47 Fed. Reg. 6,869 (1982), 50 RR 2d 1267.

[2] Petition by Granger Associates, RM-5206, filed October 21, 1985; petition by DEI Energy Systems, Inc., RM-5178, filed September 19, 1985; petition by Central Station Electrical Protection Association, RM-5362, filed March 6, 1986 and petition by Radscan, Inc., RM-5383, filed March 31, 1986.

[3] Second Report and Order in Docket No. 79-18, *supra*, at para. 11. Our prohibition of point-to-point operation on the frequencies allocated for multipoint use, listed in 47 C.F.R. § 94.65(a), is based on the fact that there are many frequencies available for point-to-point operations and only a limited number of frequencies available for multipoint use. In addition, the use of point-to-multipoint frequencies to satisfy point-to-point communications is inefficient and contrary to § 94.15 of the Rules.

[4] *See* 47 C.F.R. § 94.3.

[5] *See* 47 C.F.R. §§ 94.1-94.199.

[6] A list of parties filing comments and reply comments is provided in Appendix A.

[7] *See* 47 C.F.R. § 94.71.

[8] *See* , for example, IPMA comments at 15.

[9] *See* , for example, Nitech comments at 29.

[10] Radscan comments at 5-6.

[11] Two equipment suppliers, Granger Associates and Microwave Data Systems, Inc. (Microwave) state that over 90% of the equipment they deliver operates at 1200 bps. According to Microwave, the reason for this dominance is that the associated telemetry gear used is designed to operate over leased telephone lines using 1200 bps asynchronous modems. *See* Microwave comments at 5-6.

[12] All of the commenters addressing this issue except two support the interwoven proposal. The two, Central Station Electrical Protection Association (CSEPA) and Connecticut Natural Gas Corporation (CNG), claim that this interwoven approach will result in unacceptable interference because it will allow a 12.5 kHz station only 6.25 kHz removed from a station employing a 25 kHz bandwidth. As we noted in footnote 83 of the NPRM, however, such situations will be treated as co-channel and therefore subject to a mileage separation requirement.

[13] Microwave comments at 6.

[14] Digital comments at 12.

[15] Motorola reply comments at 10-11.

[16] UTC comments at 20.

[17] API reply comments at 7-8.

[18] Radscan comments at 10.

[19] Equipment cost, by itself, is not a sufficient justification for a wider channel.

[20] *See* , for example, API reply comments at 5-6.

[21] Motorola comments at 4.

[22] 47 C.F.R. § 1.962 (1986). Splitting of channels will not constitute a change in frequency for the purposes of this section because operation on the new frequencies is limited to the same segment of the spectrum.

[23] Frequency tolerance is the maximum permissible departure permitted with respect to the assigned frequency of the corresponding characteristic frequency of a emission.

[24] *See* 47 C.F.R. § 94.67.

[25] In doing so we stated that we were interested in the impact of tighter tolerances on equipment costs. *See* Notice, para. 42.

[26] Microwave comments at 7.

[27] *See, e.g.* Motorola comments at 6.

[28] *See* , for example, Multipoint Networks comments at 10.

[29] CSEPA comments at 9.

[30] *See,* for example, Motorola comments at 9.

[31] Digital comments at 16.

[32] As a transmitter drifts closer in frequency to an adjacent channel, a higher level of transmitter power falls into the bandwidth of the victim receiver, thereby increasing the susceptibility of the receiver to the interfering signal. The net effect is a reduction in adjacent channel protection and a corresponding potential for increased interference.

[33] A number of the multiple address frequencies are available for common carrier (Part 22) operations as well as Part 94 operations.

[34] *See Notice* at para. 47.

[35] UTC comments at 8-9.

[36] UTC comments at 17.

[37] *See* , for example, APPA comments at 1.

[38] AGA comments at 7-8.

[39] Digital comments at 8.

[40] API comments at 6-7.

[41] *See* , for example, CSEPA comments at 4.

[42] Motorola comments at 5.

[43] Multipoint comments at 7.

[44] *See* Third Notice of Proposed Rule Making, Gen. Docket No. 82-243, 2 FCC Rcd 1608 (1987).

[45] *See* , for example, ALAGASCO comments at 2.

[46] MPUC comments at 1.

[47] Minnegasco comments at 5.

[48] AGA comments at 18-19.

[49] BGC comments at 2.

[50] Unpaired MAS frequencies currently available include those in the 956 MHz band and those 928 and 959 MHz frequencies listed in the Public Mobile Service 47 C.F.R. §§ 94.65(a)(1) and 22.501(g).

[51] Entities licensed on the MAS frequency pairs for two-way point-to-multipoint communications may also use the 952 MHz frequency for mobile master stations. All mobile operations on 952 MHz, however, is on a secondary basis.

[52] 47 C.F.R. § 94.15(e) provides that "frequencies will be assigned in *pairs* for those stations employing *full - duplex* (two-way) transmission. . . . Provision is made in some bands for *non - paired* frequencies for systems employing *one-way* transmission" (emphasis added).

[53] CSEPA comments at 12.

[54] *See* note 3 *supra.*

[55] Because of the increased interference potential we will continue to prohibit direct remote-to-remote traffic.

[56] The present method for determining co-channel separation is to calculate each master station's service area. The service radius in miles is a function of antenna height and is determined by taking the square root of twice the antenna height. The service area of the proposed master station must be at least 70 miles from the service areas of all existing co-channel users.

[57] To determine the service area we used the Commission's R-6602 curves. *See* "Development of VHF & UHF Propagation Curves for TV and FM Broadcasting," FCC Report No. R-6602 (1966).

[58] *See* , for example, Digital comments at 8.

[59] Granger comments at 7.

[60] *See* , for example, Motorola comments at 11-12.

[61] IPMA comments at 20.

[62] Radscan comments at 16.

[63] *See* Notice at para. 57.

[64] We believe a signal level approximately 20 dB above receiver threshold constitutes a high quality signal in this case. Based on Granger's filing this translates to a receive signal level of -91 dBm. Further, we believe this quality of signal should be provided to approximately ninety percent of the locations, fifty percent of the time within the service area.

[65] Motorola states that directional antennas with 15 dB protection are commercially available for less than50. Motorola comments at 11-12.

[66] This does not mean that we will require licensees to use directional antennas at the remote sites but only that directional antennas be assumed in making interference calculations. Licensees are free to use whatever antennas they desire. We will not provided greater interference protection or mileage separation, however, for stations employing an omnidirectional antenna or a poorer directional antenna than the one assumed in paragraph 49 at the remote site.

[67] *See* note 57 *supra.*

[68] Using R-6602, the specific service area works out to be 23 miles. We have rounded it off to 25 miles for convenience.

[69] In order to provide for antenna heights in excess of 500 feet we have adopted a power reduction table. *See* Appendix B, Section 94.65(a)(1).

[70] Motorola, in its comments, stated that an 8 dB factor for location variability was more appropriate. While a case could be made to support a figure of 8 dB when operating in a rural enviroment, we believe multiple address systems will be implemented mainly in urban areas where the location variability is generally greater. We believe that a 12 dB figure is a more representative value for operation in an urban environment. *See* FCC Report T.R.R. 2.4.16, " UHF Propagation Within Line of Sight" (1951). If operating in a rural area we will consider requests for a lower factor on a case-by-case basis. *See* paragraph 51.

[71] The front-to-back ratio of a directional antenna is the ratio of its effectiveness toward the front to its effectiveness toward the back.

[72] Co-channel in this case includes stations where the assigned frequencies are different but the authorized bandwidths overlap.

[73] This analysis is based on a typical two-way MAS operation using a frequency pair. There are, however, unpaired MAS frequencies available. Users should be aware that the 75-mile separation criteria may not provide the same protection for operations on unpaired frequencies.

[74] Mobile systems typically operate at lower power and with a lower antenna height than fixed systems and, therefore, can be located closer together.

[75] CSEPA comments at 12.

[76] ENSCAN comments at 5.

[77] ENSCAN reply comments at 6.

[78] This fifty mile separation is based on a twenty-five mile radius service area.

[79] Multiple address systems consisting only of remote stations (*i.e.*, no master station) will be considered as mobile for licensing purposes.

[80] In the past we have allowed short-spaced assignments in cases where the applicant believes the proposal is technically and economically feasible. *See Report and Order*, Docket 82-593, 49 Fed. Reg. 171505 (1984).

[81] *See* note 52 *supra*.

[82] *See* , for example, UTC comments at 25.

[83] *See* , for example, IPMA comments at 17.

[84] AGA comments at 18-19.

[85] Nitech comments at 15-16.

[86] Nitech comments at 20.

[87] For example, CSEPA stated that central station alarm companies require the use of a frequency pair in order to provide the highest grade of protection. *See* CSEPA petition at 12-13.

[88] Frequencies listed in § 22.501(g)(1) are available for shared use by Part 94 users. 47 C.F.R. § 94.65(a)(1).

[89] One-way operations on the 928 MHz side of the pair must meet the mileage separation criteria in § 94.63(d)(4)(i) to a frequency pair.

[90] *See Notice* at n. 87.

[91] Radscan comments at 17.

[92] Radscan comments at 21.

[93] Desensitization occurs when undesired signals get through a receiver's "front door" overloading the early stages causing a loss in the level of desired signal *(i.e.,* loss of receiver sensitivity). This often occurs when a transmitter is too close in frequency and distance to a receiver.

[94] *See* 47 C.F.R. § 94.15(b).

[95] Under this policy we have required the station that is the "newcomer" to bear the financial and general responsibility for eliminating objectionable interference to an existing station or receiver site. *See* Midnight Sun Broadcasting Company, 11 FCC 1119 (1947).

[96] Digital comments at 13.

[97] *See* § 91.71(c)(2).

[98] Microwave comments at 10.

[99] Motorola comments at 10-11.

[100] Radscan reply comments at 11.

[101] *See* 47 C.F.R. § 22.501(g)(1).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications — Transmittal No. 948

Revisions to Tariff F.C.C. No. 11

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: March 4, 1988 ; Released: March 15, 1988

By the Chief, Common Carrier Bureau:

I. BACKGROUND

1. On June 26, 1987, the American Telephone and Telegraph Company (AT&T) filed the above-captioned transmittal revising its private line local channel tariff to require the customer, when ordering a local channel circuit, to furnish AT&T with, *inter alia* : (1) the area code and first three digits of the telephone number at the customer premises; and (2) the name and telephone number of a representative at each customer premises.

2. Aeronautical Radio, Inc. (Arinc) filed a petition to reject Transmittal No. 948 ten days after the deadline for filing petitions. Arinc accompanied its petition with a motion for leave to file out of time. Arinc claimed that AT&T had agreed to notify Arinc of the date on which AT&T would file the revisions at issue, but did not do so until after the time for filing petitions had expired. As a result, Arinc claimed that it overlooked any Commission public notices describing AT&T's transmittal and did not learn of the transmittal's filing early enough to file a timely petition. AT&T filed a reply.[1] The Common Carrier Bureau denied Arinc's motion and dismissed its petition to reject as untimely filed. AT&T Communications, Revisions to Tariff F.C.C. No. 11, Transmittal No. 948, 2 FCC Rcd 5657 (1987) (*Bureau Order*). This Bureau concluded that Arinc had failed to demonstrate good cause for its late filing. This Bureau stated that the extenuating circumstance cited by Arinc was insufficient to justify its failure to file within the time specified in Section 1.773 of the Commission's Rules, 47 C.F.R. § 1.773.[2] The tariff revisions became effective on September 10, 1987.

3. On October 9, 1987, Arinc filed a petition for reconsideration of the *Bureau Order* (Petition). AT&T filed a motion to dismiss the petition on October 22, 1987 (Motion To Dismiss), and Arinc filed an opposition to AT&T's motion to dismiss on November 2, 1987 (Opposition).

II. SUMMARY OF PLEADINGS

4. Arinc contends generally that this Bureau erred in denying its motion for leave to file a late petition to reject. Petition at 1. Arinc asserts that this Bureau should now reconsider our denial and reach the merits of Arinc's petition to reject. *Id.* at 2.

5. Arinc first maintains that it adequately demonstrated that extenuating circumstances surrounding its agreement with AT&T warranted acceptance of its late-filed pleading. Arinc reiterates that it entered into an agreement with AT&T to provide timely notification "rather than rely on the Commission's "admittedly informal notice procedures." Petition at 5. [3]

6. Arinc next asserts that its late-filed pleading did not affect the Commission's satisfaction of its statutory obligations under the Communications Act. According to Arinc, it filed its petition to reject within the statutory deadline inasmuch as this Bureau can defer the effective date of a tariff for up to 90 days, or suspend the revisions or designate particular issues for investigation. *Id.* at 6. It further contends that the *Bureau Order* suggests that delays caused by problems unrelated to the Commission's administrative functions will not justify a waiver of its rules. Arinc argues that this Bureau has granted motions for leave to file out of time because of delays "regarding the private arrangements associated with the filing of petitions." *Id.* at 7-8. Arinc also asserts that since AT&T did not oppose its motion, this Bureau was not required to deny Arinc's motion to avoid unfair prejudice to AT&T. *Id.* at 8. Further, Arinc contends that this Bureau should have exercised leniency in granting its motion in light of the revisions of Part 1 of the Commission's Rules, which, *inter alia*, reduced the 20-day pleading deadline for tariff filings effective on 30 to 89 days' notice to 15 days. *Id.* at 6-10.[4] Finally, Arinc argues that this Bureau has established a discriminatory double standard by granting AT&T a two-week extension to file applications to construct, launch, and operate domestic fixed-satellite (domsat) space stations in *GTE Spacenet* [5] because AT&T stated that it had overlooked the public notice establishing a pleading cycle. *Id.* at 10-12.

7. In its motion to dismiss, AT&T argues that Arinc seeks reconsideration of an interlocutory Order, which is precluded by Section 1.106(a)(1) of the Commission's Rules, 47 C.F.R. § 1.106(a)(1). Motion To Dismiss at 2. AT&T cites the Commission's decision to dismiss petitions for reconsideration of an Order relating to the *Megacom* tariff[6] to support its argument. *Id.* at 3. Accordingly, AT&T asserts that Arinc's petition for reconsideration should be dismissed.

8. Arinc responds that the *Bureau Order* is a final determination. Opposition at 1. According to Arinc, the Order would have been interlocutory only if this Bureau had denied Arinc's petition to reject on the merits.[7] *Id.* at 4. Arinc argues that this Bureau should entertain its petition for reconsideration because it has no other opportunity to seek review of this Bureau's decision. *Id.* at 1.

III. DISCUSSION

9. As an initial matter, we conclude that the *Bureau Order* is not interlocutory.[8] We did not deny Arinc's petition to reject, but rather dismissed the petition on procedural grounds. Accordingly, *Megacom* does not support a claim that the *Bureau Order* is interlocutory. Fur-

thermore, we took final action in the *Bureau Order* on the issue of whether Arinc could participate in the proceeding on Transmittal No. 948. In concluding that Arinc had not established good cause to file a late petition, we made a final determination that Arinc could not file a petition. We will therefore entertain Arinc's petition for reconsideration of that final determination.

10. Having reviewed the arguments raised by Arinc in its petition, however, we conclude for a number of reasons that we will not grant its requested relief. First, as we stated in our *Bureau Order*, application of the Commission's procedural rules cannot be affected by private notification arrangements, despite Arinc's concern regarding the efficacy of the Commission's notice procedures. Moreover, the Tariff Transmittal Log in fact provided notice of AT&T's Transmittal No. 948. As Arinc admitted in its motion for leave to file out of time, it overlooked any Commission public notices because it relied on AT&T for notification.[9]

11. We also find no merit to Arinc's argument that its violation of the Commission's Rules was inconsequential because this Bureau has discretion to defer the effective date of a tariff or order a suspension or investigation. Given the statutory time constraints under which the tariff review process operates, a late filing by a major telecommunications user familiar with the regulatory process does not warrant such an exercise of our discretion. Although we are solicitous of the efforts of parties to participate in our proceedings, we cannot condone filing practices that have the effect of shortening the period of our review of pending tariffs, thus making it more difficult for us to meet our statutory tariff review responsibilities.[10] Furthermore, Arinc erroneously contends that the *Bureau Order* suggests that delays caused by problems not related to the Commission's administrative functions will not justify a waiver of its rules. In our Order, we narrowly determined that Arinc had failed to demonstrate good cause for its ten-day-late filing on the basis of assertions regarding private notification arrangements made by the parties. *Bureau Order*, 2 FCC Rcd at 5657. We did not suggest that we would not find good cause to accept a party's late filing under more compelling circumstances.[11]

12. Further, we do not construe the language in *Amendment to Parts 1 and 61* to give Arinc an additional ground to support its late filing. In that proceeding, the Commission stated that although it favored an abbreviated pleading cycle for the majority of tariffs, it expected this Bureau to continue to respond expeditiously to motions to extend the pleading cycle for controversial or complex tariffs. Clearly, this language applies if a party needs additional time to prepare its petition, and requests in advance an extension of time. Moreover, the revisions made by Transmittal No. 948 are not the type of controversial or complex tariff revisions contemplated by the language cited above.

13. We are similarly unpersuaded by Arinc's claim that AT&T received preferential treatment in *GTE Spacenet*. Arinc fails to recognize that its untimely filing occurred in the context of a tariff proceeding, not a domsat proceeding, which is not subject to the 90-day statutory review deadline applicable to tariff review.[12] Moreover, Section 61.58 of the Commission's Rules, 47 C.F.R. § 61.58, contemplates that the majority of tariff filings will be reviewed on less than 90 days' notice. The tariff review procedures represent a careful accommodation of competing interests. In implementing the statutory scheme, we balance the need for expedited review of tariff filings with the need to provide reasonable opportunity for affected parties to be involved in the tariff process. In this instance, in view of the time constraints under which the tariff review process operates, this Bureau properly balanced those needs in dismissing Arinc's late-filed petition.

IV. CONCLUSION AND ORDERING CLAUSE

14. Based upon the foregoing discussion, we conclude that this Bureau did not err in denying Arinc's motion for leave to file out of time and dismissing the petition to reject AT&T Transmittal No. 948.

15. Accordingly, IT IS ORDERED that the petition for reconsideration filed by Aeronautical Radio, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] AT&T did not contest the statement of facts in the Arinc motion, and replied to the petition on the merits.

[2] This Bureau also noted that Arinc is a major telecommunications user, is familiar with the tariff review process, and has ready access to the Commission's public notices of tariff transmittals. This Bureau stated that "[a]pplication of the Commission's procedural rules, particularly those intended to facilitate compliance with statutory deadlines, cannot be affected by assertions regarding private notification arrangements made by parties." *Bureau Order*, 2 FCC Rcd at 5657. In a footnote, however, this Bureau advised AT&T, as the actual customer of the local exchange carriers (LECs) for special access facilities, to use its relationship with the LECs to help resolve disputes between its private line local channel customers and the LECs. *Id.* at 5657 n.4.

[3] Arinc states that the Commission does not guarantee the completeness or accuracy of the Tariff Transmittal Public Reference Log public notices and places an explanation to that effect at the beginning of each such notice. Arinc further states that although the customer notification requirements of Section 61.58 of the Commission's Rules, 47 C.F.R. § 61.58, do not apply to the tariff changes proposed in Transmittal No. 948, Arinc's arrangement with AT&T was consistent with the spirit of that section to the extent that Arinc had formally apprised AT&T that the proposed change would seriously impair its service. Petition at 4 n.5. Arinc also asserts that AT&T's agreement to give Arinc notice of such changes was consistent with the "cooperative attitude encouraged repeatedly by the Commission to resolve issues not necessarily decided by the Commission's rules." *Id.* at 5-6 (citing Annual 1985 Access Tariff Filings, Phase II, 2 FCC Rcd 1416, 1438 (1987) (*Phase II Access Order*)).

[4] *See* Amendment of Parts 1 and 61 of the Commission's Rules, CC Docket No. 83-992, 98 FCC 2d 885 (1984), *recon.*, FCC 85-439, released Aug. 20, 1985 (*Amendment of Parts 1 and 61*).

[5] GTE Spacenet Corporation, 2 FCC Rcd 5452 (1987) (*GTE Spacenet*).

[6] Order on Reconsideration, AT&T Megacom Order, 1 FCC Rcd 930 (1986) (*Megacom*).

[7] Arinc further claims that even if the *Bureau Order* is interlocutory, the *Bureau Order* is analogous to an Order denying participation in a hearing. Section 1.106(a)(1) exempts such Orders from the rule that petitions for reconsideration of interlocutory actions will not be entertained. Opposition at 4-5. Arinc also draws an analogy to precedent which supports the proposition that denials of motions for leave to intervene as a matter of right, though interlocutory, are reviewable. *Id.* at 5.

[8] We note, however, that Arinc contends that even if the *Bureau Order* is interlocutory, we should reconsider it on the merits because we have previously entertained a petition by AT&T under similar circumstances. *Id.* at 6 (citing Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, Order on Reconsideration, released Dec. 29, 1983 (*Investigation Order*). That *Investigation Order* specifically stated that the Commission would entertain reconsideration of an interlocutory suspension Order because the Commission found good cause in view of the "extraordinary and unique circumstances" presented by the tariff filings at issue. Arinc has made no showing here that the circumstances surrounding its late-filed pleading are sufficiently similar to the facts involved in the *Investigation Order* to warrant our viewing that decision as controlling in this case.

[9] Arinc's other contentions regarding extenuating circumstances are equally unpersuasive. As Arinc states, the language of Section 61.58(a)(4) does not apply to tariff changes of the type AT&T made in Transmittal No. 948. Thus, Arinc's contention that it had formally apprised AT&T that the proposed change would seriously impair its service is irrelevant. Further, contrary to Arinc's broad reading of the *Phase II Access Order*, the Commission merely agreed with the parties that an Ordering and Billing Forum was the appropriate forum to resolve billing disputes. The type of cooperation encouraged by the Commission in that proceeding was not intended to encompass the type of private arrangement at issue here.

[10] Accordingly, notwithstanding AT&T's lack of opposition to Arinc's motion, this Bureau has an overriding interest in acting upon the pending tariff.

[11] In fact, Arinc refers to several proceedings in which we found good cause due to the totality of the circumstances. In none of these proceedings, however, did a party ask us to accept a more than minimally late petition against a transmittal on the basis of assertions regarding private notification arrangements made by the parties.

[12] *See* Section 203(b)(2) of the Communications Act, 47 U.S.C. § 203(b)(2), which stipulates that the Commission may not require the notice period for a tariff to be more than 90 days.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-499

Revision of Section 73.3527(a)(7)
relating to the Issues-Programs List
to Public Broadcasting Licensees.

ERRATUM

Released: March 15, 1988

On March 4, 1988, the Commission released a Report and Order (FCC 88-52) in the captioned proceeding. Paragraph 19 of that document is corrected to indicate that the effective date of the action is **April 18, 1988.**

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Licensing Under Title III of the Communications Act of 1934, as amended, of Private Transmit/Receive Earth Stations Operating with the INTELSAT Global Communications Satellite System — File No. I-S-P-86-006

DECLARATORY RULING

Adopted: March 1, 1988; Released: March 15, 1988

By the Commission:

1. Reuters U.S., Inc. (Reuters) has requested that the Commission issue a declaratory ruling that it has the authority under Title III of the Communications Act of 1934 to license private, non-common carrier, transmit/receive earth stations in the International Fixed Satellite Service for use with the satellites of the International Telecommunications Satellite Organization (INTELSAT). Comments on Reuters' petition were filed by Comsat International Communications, Inc. (CICI); ITT World Communications Inc. (ITT); Overseas Telecommunications, Inc. (OTI); TRT Telecommunications Corporation (TRT); Satellite Transmission and Reception Specialists (STARS); Equatorial Communications Services (Equatorial); and Capital Cities/ABC, Inc., CBS and NBC, in a joint petition (the television networks). Reply comments were filed by Reuters and OTI.[1]

2. Reuters is the indirect, wholly-owned United States subsidiary of Reuters Limited, a United Kingdom corporation engaged in providing news, photo and information services to newspapers and financial institutions throughout the United States and worldwide. Reuters states that its existing trans-Atlantic communications requirements are of sufficient volume and specialization to justify, on economic and operational grounds, the lease of full-time INTELSAT circuits from the Comsat Space Communications Division, and the construction and operation of a private, dedicated earth station facility for use with INTELNET and IBS services. Reuters currently operates private earth station facilities for the domestic and authorized transborder distribution of its services and has technically qualified personnel available to operate dedicated international earth station facilities. Accordingly, Reuters seeks a determination that the Commission has the authority to license private, non-common carrier earth stations for operation with the INTELSAT system under Title III of the Communications Act of 1934, notwithstanding Section 201(c)(7) of the Communications Satellite Act of 1962 (Satellite Act), 47 U.S.C. §721(c)(7), which provides that the Commission shall license "satellite terminal stations" used with the INTELSAT satellite system either to Comsat or to one or more authorized common carriers.[2]

SUMMARY OF ARGUMENTS

3. Reuters contends that, absent an independent limitation on the Commission's authority under Title III of the Communications Act, the Commission is empowered to license earth stations on either a private or common carrier basis as may be consistent with the public interest, convenience and necessity. Reuters claims that the Commission's decision to permit the offering of transponder capacity by separate satellite systems on both a common carrier and non-common carrier basis contemplates the licensing of non-common carrier earth stations pursuant to Title III authority.[3] Reuters argues that, "while the issue was not squarely addressed," the availability of private earth stations used in connection with separate satellite system transponder capacity suggests that the Commission proposes to license earth stations in the International Fixed Satellite Service on a non-common carrier basis, with INTELSAT space stations as authorized points of communication.

4. Reuters maintains that Section 201(c)(7) of the Satellite Act is not an independent limitation on the Commission's licensing powers under Title III of the Communications Act. Reuters avers that the plain language and relevant legislative history of the Satellite Act indicate that its provisions were intended to supplement rather than supplant the Commission's Title III licensing authority, and that the specific legislative history of Section 201(c)(7) reveals that Congress' sole concern was that common carriers such as AT&T not be preferred over Comsat in the granting of licenses to operate earth station facilities. Reuters contends that there is no indication that Congress affirmatively intended to prohibit the licensing of private earth stations for operation with the INTELSAT system, since Congress did not envision the development of satellite communication technologies and economies that would support the implementation of private earth station facilities. Reuters cites a recent Commission ruling[4] for the proposition that, in situations not clearly addressed by Congress in the Satellite Act, the Commission must be guided by its plenary Title III authority to regulate international earth station operations.

5. In addition, referring to the Commission's liberalization of its earth station ownership policy to permit the construction and operation of earth stations by common carriers outside of the Earth Station Ownership Committee (ESOC), Reuters alleges that identical economic and policy considerations support private earth station licensing. Reuters states that private earth stations will enable users to meet communications requirements at lower costs and to design and implement customized and innovative technologies. Reuters contends that the Commission may license private IBS earth stations pursuant to the technical classification scheme adopted in the *Earth Station Ownership* proceeding,[5] where it concluded that "with respect to . . . IBS earth station applications the issue of technical inefficiency is generally irrelevant." Finally, Reuters points out that the Commission's main concern in the *Earth Station Ownership* proceeding was the potential division of the market for multi-purpose earth station services, diverting traffic from the existing ESOC earth stations. Reuters maintains that a private international earth station by definition would not provide multi-purpose earth station services in competition with ESOC, since it would not be connected with the public switched network.

6. Equatorial and the television networks support Reuters' position that the Commission possesses the statutory authority to grant licenses to non-common carrier users to construct and operate international transmit/receive earth stations. They argue that licensing of INTELSAT earth stations to non-carriers is consistent with recent Commission actions in the *Authorized User*,[6] *Earth Station Ownership*, *International Competitive Carrier* [7] and *Separate Systems* proceedings, through which flexibility and competitive opportunities were introduced into the international communications environment. They claim that it makes little economic or technical sense, in situations where a user intends to dedicate an on-premise earth station to its own purposes and where that user is technically competent to transmit to a satellite, to require the imposition of a carrier "middleman" between the user and the INTELSAT system. The television networks claim that experienced users will benefit from private licensing of earth stations through the ability to control the facility location, through the reduction of interconnection costs, and through the ability to tailor and modify the earth station to meet specialized needs. Equatorial urges that the Commission broaden the scope of its declaratory ruling to include INTELNET II transmit earth stations as well as IBS and television earth stations.[8]

7. CICI, ITT, OTI, TRT and STARS oppose Reuters' request. The principal argument against Reuters' proposal is that the Commission does not possess the statutory authority to license private earth stations to operate with the INTELSAT system. They argue that the plain language of Section 201(c)(7) of the Satellite Act and its legislative history preclude the licensing of INTELSAT transmit/receive earth stations to entities other than authorized international common carriers and Comsat. They contend that private earth station licensing is inconsistent with the regulatory scheme of the Satellite Act, in that only Comsat and the carriers are regulated entities under the Act. The opponents further point out that Congress expressly authorized the licensing of private earth stations in the 1978 amendments to the Satellite Act which implemented INMARSAT; they claim that Congress consciously distinguished between INMARSAT and INTELSAT earth stations and authorized non-carrier licensing of the former but not of the latter. Similarly, reference is made to Section 305 of the Satellite Act, pursuant to which Comsat is authorized to make space segment available to carriers and "other authorized entities." The opponents argue that the absence of such language in Section 201(c)(7) demonstrates that Congress did not intend to permit the licensing of private earth stations. The commenters also point to Section 401 of the Act, which provides that in the event of a conflict between the Satellite Act and the Communications Act, the provisions of the Satellite Act are controlling. Moreover, they contend that as a matter of statutory construction, the more specific provision, here Section 201(c)(7), overrides the general licensing provisions in Title III of the Communications Act.

8. The opponents further claim that, in its *Authorized User* and *Earth Station Ownership* proceedings, the Commission has consistently identified its earth station licensing authority as deriving from Section 201(c)(7), which names only Comsat and the carriers as potential licensees. They claim that Reuters erroneously relies on the *Separate Systems Decision*, which dealt with the establishment of private commercial satellite systems separate from the INTELSAT system, not with the licensing of earth stations within the INTELSAT system. Similarly, they distinguish the *Receive - Only Earth Stations* ruling as involving a limited class of small, non-standard, receive-only earth stations used in connection with the INTELNET I service, which the Commission found were not "satellite terminal stations" to which Section 201(c)(7) applies.

9. The opposing parties also advance arguments against grant of the Reuters request on public interest grounds. They claim that Reuters has neither established a need for private interntional earth station licensing, nor shown that existing carriers cannot meet Reuters' communications requirements. The parties point out that the Commission has recently streamlined the tariff and facility regulation of non-dominant international carriers,[9] and that Reuters may become a common carrier with little difficulty and operate an INTELSAT earth station on that basis. They contend that private licensing will harm existing IBS carriers in that large users will construct private systems and, as a result, small and medium-sized users will be harmed if IBS carriers cannot remain economically viable. They state that the INTELSAT system must be protected against jamming and unauthorized reception caused by private end users who might not comply with INTELSAT's technical and operational requirements.

10. Finally, the opposing commenters argue that, even if the Commission were to possess statutory authority to license private earth stations, it may not modify existing policy without a formal Rule Making proceeding. CICI in particular argues that there are unanswered public policy questions concerning the impact of private licensing on the earth station ownership policy, on ESOC dissolution negotiations, on the implementation of operating agreements between existing carriers and overseas administrations, and on the Commission's ability to maintain equitable access to the INTELSAT system, which can only be addressed in a Rule Making.

DISCUSSION

11. Reuters seeks a declaratory ruling that this Commission has authority to authorize the construction and operation of private, non-common carrier transmit/receive international earth stations for use with the INTELSAT system. After reviewing the pertinent statutes and the comments of all parties, we conclude that the Satellite Act does not preclude us from licensing such international earth stations to entities other than Comsat and the carriers for use with INTELNET and IBS services.

12. The private, dedicated earth station facility proposed by Reuters is located at Hauppauge, New York, and will be used initially to establish INTELNET I service from the U.S. to Latin America and the Caribbean within the west hemispheric footprint of INTELSAT VA satellites in the Atlantic Ocean Region.[10] These INTELNET circuits will be used for the point-to-multipoint, U.S.-outbound distribution of news-wire, news-photo, and financial-information services to Reuters' subscribers. For the news-wire and news-photo services, private-line, common-carrier circuits will be used to connect Reuters' technical center at Hauppauge with its news offices in the United States and with its Picture Bureau in Washington, D.C. For its financial-information service, Reuters will acquire from carriers private-line circuits to feed data into Reuters' computers co-located with the proposed earth station at Hauppauge. While Reuters is currently authorized to provide domestic financial-information services using

computer and earth station facilities located at the Hauppauge center, Reuters states that it will not interconnect its domestic system with the proposed international earth station. The foreign receive-only earth stations will generally be located on the premises of Reuters' subscribers, except in situations where the subscriber is required to obtain private-line circuits from the local PTT.

13. Section 201(c)(7) of the Satellite Act provides that "in its administration of the provisions of the Communications Act [the Federal Communications Commission] shall . . . grant appropriate authorization for the construction and operation of each satellite terminal station, either to the corporation [Comsat] or to one or more authorized carriers or to the corporation and one or more such carriers jointly . . . without preference to either." The language of Section 201(c)(7), however, does not confer any special licensing authority upon the Commission. Rather, the Commission's authority to license "satellite terminal stations," just as with all other radio stations, falls under Title III (Sections 301 through 310 of the Communications Act).[11] Title III does not distinguish between Comsat, the carriers, and private entities as qualified earth station licensees. Accordingly, the narrow issue here is whether Section 201(c)(7) limits the Commission's discretion under Title III to grant private international earth station authorizations to "any applicant,"[12] if the public interest will be served thereby. In particular, Section 401 of the Satellite Act provides that in the event the provisions of the Satellite Act and the Communications Act are inconsistent the former governs. Because no such inconsistency exists, we conclude that Section 201(c)(7) does not pose such a limitation.

14. As we stated in the *Receive - Only Earth Stations* decision, *supra*, the purpose of Section 201(c)(7) was not to limit our discretion but to make it clear that we have complete discretion to license "satellite terminal stations" without Congressional prejudgment.[13] To understand Section 201(c)(7), one must read it in conjunction with Section 103(2) of the Satellite Act, 47 U.S.C. Section 702(2). Section 103(2) states that for purposes of Section 201(c)(7) a "satellite terminal station" is a "complex of communications equipment . . ., *operationally connected with one or more terrestrial communications systems*, and capable of transmitting telecommunications to or receiving telecommunications from a communications satellite." [Emphasis added]. We have long held that the "terrestrial communications system" language in Section 103(2) refers to the networks of the then-existing U.S. international common carriers (AT&T and the IRCs).[14] The legislative history defines the term "operationally connected" as any connection by wire or radio between a fixed or mobile satellite terminal station and a terrestrial system – that is a common carrier network.[15]

15. We have also found that use of the "terrestrial communications systems" language shows that Congress was addressing the ownership of the large satellite terminal stations which would be built as part of the global satellite system and which would become an integral part of the terrestrial networks of the U.S. common carriers.[16] With respect to these common carrier earth stations, Section 201(c)(7) was intended to make clear that Congress was not prejudging the question of who should be authorized to construct and operate them. S. 2814, the original Kennedy administration proposal for the establishment of a satellite corporation, provided for ownership of the entire system by Comsat, including the earth stations. The carriers argued that they, as the entities responsible for the end-to-end services the satellite system would carry, should own the stations.[17] While the legislative history indicates Congressional sympathy for the carriers' position,[18] Section 201(c)(7) was written into the bill to give the Commission discretion to license satellite terminal stations either to the carriers or to Comsat.[19] Section 201(c)(7) requires the Commission to exercise this discretion "without preference to either." The intention of this language:

> "is to make clear that there is no legislative prejudgement as to who shall establish a ground terminal station. The Commission is authorized to give full consideration to all relevant technological, economic and operational factors in determining what meets the public interest, convenience and necessity."
>
> S. Rep. No. 1584 at 18.

Thus, even on the question of the large, common carrier satellite terminal stations, Congress gave us the discretion to balance carrier and Comsat interests in determining which entities should own the "satellite terminal stations" that were expected to be constructed as part of common carrier service offerings. In short, Section 201(c)(7) only deals with a limited type of earth station.

16. The question before us raises an entirely different issue. The private international earth station proposed by Reuters is not a "satellite terminal station" under Section 103(2) or 201(c)(7). It will not be "operationally connected" with a terrestrial communications system and will not be used to provide common carrier services to the public.[20] Rather, the facility will be used solely for the private business of Reuters and the transmission of news, news photos and financial information directly to its subscribers in Latin America and the Caribbean. The overseas receive-only earth stations which will be used with the earth station at issue here will be located principally at the subcribers' premises. The fact that Reuters proposes to lease private-line circuits to connect its computer center with its proposed private earth station does not make Reuters a common carrier or alter the private nature of its satellite transmission. It is the use to which the line is put (here, the private business of Reuters) and not the status of the facility's provider (here, a common carrier) that determines whether the facility is private or common carrier.

17. Section 201(c)(7) and its legislative history are silent as to how the Commission should treat earth stations to be used by entities other than Comsat and the carriers. However, it is clear that Congress could not have considered every alternative or supplemental earth station licensing scheme when it enacted Section 201(c)(7). There is no indication that Congress conceived of the private, noncommon carrier, transmit/receive earth stations under consideration here. The legislative history shows that the witnesses and Congressional committee members considering the Satellite Act legislation believed, based on the state of satellite technology in 1962 and that expected to be available for the foreseeable future, that the global satellite system would be limited to the provision of traditional common carrier services.[21] Satellite technology was in its infancy in 1962: use of the geostationary orbit was as yet unproved; the expected life of a communications satellite was three months; capacity was limited because existing launch vehicles could only launch small satellites; and the

only earth station in existence were the large horn antenna that AT&T had built at Andover, Maine for its Telstar experiment and a smaller experimental station built by ITT at Nutley, New Jersey. The capacity and power limitations of the early satellites dictated that only large, expensive earth stations would be feasible. Thus, the possibility that the satellite system might be used for direct-to-user transmissions, or that earth stations might be small and inexpensive enough for use on customer premises, was not considered by the drafters of the 1962 legislation.[22] In short, the Satellite Act does not, nor was it intended to, address private earth stations.

18. Under these circumstances, no conflict between the two statutes appears to exist. Thus, we do not believe that Section 201(c)(7) forecloses Commission licensing of private earth stations which are not "satellite terminal stations" within the meaning of the Satellite Act, if issuance of a license is found to be in the public interest under Title III of the Communications Act.

19. Moreover, as a matter of policy, it would be particularly inappropriate in the present matter to adopt a restrictive reading of Section 201(c)(7). Under our *Authorized User II* policy,[23] Reuters and other private users may take outbound IBS and INTELNET space segment directly from Comsat without an intervening carrier.[24] Since this arrangement is clearly permissible under the Satellite Act, it would be anomalous to find that the statute nevertheless requires Reuters to obtain earth station service from a common carrier that otherwise would have no operational role in the service. There is no policy reason to require such a "straw" carrier. INTELNET and IBS services were expressly designed by INTELSAT for multiple antennas and for location on customer premises. As a result, there is no need to limit the number of earth stations used with the services or, as in the case of the large, multi-purpose U.S. earth stations, to consider whether the existence of multiple antennas could adversely affect INTELSAT system efficiency.[25] Also, because INTELNET is a new and very limited service offering, we fail to see how the licensing of private, non-common carrier earth stations for this particular service will adversely affect the economic viability of IBS carriers in general.

20. From a technical standpoint, it is not necessary to limit operation of these IBS and INTELNET transmit/receive antennas to carriers in order to carry out our duty to prevent harmful interference with other uses of the radio spectrum. Because these stations do have a transmit capacity and thus have a potential for interference, we are not proposing to deregulate them. We will license them just as we now license carrier-owned earth stations under Title III of the Communications Act and Part 25 of our rules. There is no reason to assume that private users will be any more likely to violate our rules than carriers. In any event, Title III gives us the same authority over all classes of users and the same power to order a cessation of violations.

21. Accordingly, we find that we have the authority under Title III to license private, non-common carrier, transmit/receive earth stations for use with INTELNET and IBS services. Our action here is limited to this finding.[26] We do not consider whether the public interest will be served by authorization of any particular private earth station for the provision of these services. Other issues raised by the commenters in this regard should be considered within the framework of the application process and need not be resolved in this proceeding.

22. Accordingly, the request of Reuters U.S., Inc., for declaratory ruling that the Commission has the authority under Title III of the Communications Act to license private, non-common carrier transmit/receive earth stations in the International Fixed Satellite Service, with INTELSAT space stations as authorized points of communication, for use with INTELNET and IBS services, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

FOOTNOTES

[1] The Commission also requested additional information from Reuters concerning its technical proposal, and Reuters replied by letter dated September 19, 1986. OTI and ITT submitted letters commenting on Reuters' response to our inquiry.

[2] For the purpose of this ruling, satellite terminal stations are earth stations, and for simplicity we will often refer to them as such. However, not all earth stations used for this system are necessarily satellite terminal stations as defined at paragraph 14, *infra*.

[3] Establishment of Satellite Systems Providing International Communications (Separate Systems Decision), 101 FCC 2d 1046 (1985).

[4] Deregulation of Receive-Only Satellite Earth Stations Operating with the INTELSAT Global Communications Satellite System (Receive-Only Earth Stations), FCC 86-214, released May 19, 1986. There, the Commission deregulated the use of receive-only earth stations operating with the INTELSAT Global Communications System to provide INTELNET I service.

[5] Modification of Policy on Ownership and Operation of U.S. Earth Stations that Operate with the INTELSAT Global Communications Satellite System (Earth Station Ownership proceeding), 100 FCC 2d 250, 269 (1984).

[6] Authorized Users and Authorized Entities, 4 FCC 2d 421 (1966); Proposed Modification of the Commission's Authorized User Policy Concerning Access to the International Satellite Services of the Communications Satellite Corporation, 90 FCC 2d 1394 (1982) and 100 FCC 2d 177 (1985) (collectively referred to as Authorized User proceeding).

[7] International Competitive Carrier Policies (International Competitive Carrier proceeding), 102 FCC 2d 812 (1985).

[8] Equatorial notes that, unlike IBS and video transmit earth stations, a typical INTELNET II transmit earth station does not operate independently but is controlled by a master "hub" earth station. Also, because the INTELNET service uses spread spectrum modulation that operates as a kind of coding, INTELNET transmissions cannot be intercepted by unauthorized users. Equatorial contends that these factors justify licensing of INTELNET II earth stations to non-common carriers.

[9] International Competitive Carrier Policies, *supra*.

[10] Equatorial Communications Services is authorized to construct and operate an international earth station at Hauppauge, New York to provide INTELNET service to Reuters. Equatorial Communications Services, 2 FCC Rcd 1926 (1987).

[11] We note in this connection that the Satellite Act applies only to the international satellite system and that there is no statute expressly dealing with domestic satellite systems. Our authority to license domestic systems comes solely from Title III of the Communications Act.

[12] Section 307 of the Communications Act, 47 U.S.C. Section 307.

[13] Receive-Only Earth Stations, *supra*, at paras. 14-15 and notes 14-19.

[14] *See* Earth Station Ownership, 2 FCC 2d 658, 663 (1966). Neither the Satellite Act nor its legislative history expressly defines the term "terrestrial communications systems," but the Senate Report on the language which eventually became Section 103(2) made it clear that it was intended to refer to the "domestic network of a common carrier." S. Rep. No. 1584, 87th Cong., 2d Sess. 12 (1962).

[15] *Id.* at 14.

[16] Receive-Only Earth Stations at para. 14. This is clear from S. Rep. No. 1584: During the hearings on this legislation the question of whether the operation of satellite terminal stations by the corporation or the common carriers or a combination of both would best serve the public interest was the subject of extensive discussion. It was urged by some that the common carriers should establish and maintain the ground stations in the United States, as such facilities would be an integral part of the domestic network of a common carrier and that the common carriers were directly responsible for service to the public. To do otherwise, it was contended, would produce divided responsibility in making service available directly to the public. S. Rep. No. 1584 at 12. *See* also *id.* at 18.

[17] *See* , *e. g.*, Hearings on S. 2650 and S. 2814 Before the Senate Committee on Aeronautical and Space Sciences, 87th Cong., 2d Sess. (1962) [cited hereafter as Aerospace Hearings] at 79,115 (RCA); 215 (HTC); 290, 297-8 (ITT); 309, 313, 318-9 (AT&T).

[18] *See* S. Rep. No. 1319, 87th Cong., 2d Sess. 5 (1962).

[19] Congress stated that: Your committee feels that no preference should be given to either the corporation or the common carirers and has appropriately amended Section 201(c)(7) and has established the public interest, convenience, and necessity as the criteria the Commission should follow in making a determination [as to who should own a satellite terminal station]. S. Rep. No. 1584 at 12.

[20] Congress was concerned in Section 201(c)(7) only with the satellite terminal stations which would become an "integral part of the domestic network of a common carrier," S. Rep. No. 1584 at p. 12, and which would be used to exchange the carrier's common carrier traffic with the global satellite system. The fact that Reuters connects a common carrier-supplied private-line to its proposed private earth station would not make that earth station an integral part of a carrier's domestic common carrier network.

[21] *See* , *e. g.*, Aerospace Hearings, *supra*, at 18-19 (Colloquy between Senator Stuart Symington and Dr. Hugh Dryden of NASA). The only non-common carrier service discussed was the possibility that the satellte system might be used for international television transmission. However, Dr. Dryden testified that direct-to-user television service would not be available for "quite a long time" due to the limited power and capacity of the early satellites. *Id.*

[22] We do not believe that Congressional authorization of private earth stations in the 1978 INMARSAT amendments to the Satellite Act indicates that Congress considered and rejected the possibility of private earth station licensing in 1962. Nothing in the legislative history of those amendments reflects such a deliberation. Rather, the difference between the two statutes is a result of their timing. When the 1978 amendments were adopted, maritime communications technology had developed to a point where private, user-operated stations were feasible. Therefore, Congress merely took action to provide for licensing of such stations to non-common carriers.

[23] 100 FCC 2d 177 (1985).

[24] The downlink on outbound INTELNET or IBS service is outside the United States and will be provided under the terms of INTELSAT's IBS and INTELNET I offerings.

[25] *See* Earth Station Ownership, 100 FCC 2d at 269, where we determined that earth stations dedicated to providing IBS and/or television services do not raise the same concerns about impact on the INTELSAT system that are raised by multi-purpose stations.

[26] No Rule Making is necessary to decide the merits of Reuters' request for a declaratory ruling. Here we are answering a particular legal question as to our statutory authority to license private, non-common carrier earth stations. We are not adopting any particular rules. Therefore, a declaratory ruling is an appropriate vehicle to decide this issue.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

CLAY TELEVISION, INC.
Orange Park, Florida — **BC DOCKET NO. 81-690**
File No. BPCT-801010KE

ORANGE PARK FLORIDA T.V., INC.
Orange Park, Florida — **BC DOCKET NO. 81-692**
File No. BPCT-801229KK

For Construction Permit

MEMORANDUM OPINION AND ORDER

Adopted: March 7, 1988; Released: March 16, 1988

By the Commission:

1. This proceeding involves mutually exclusive applications filed by Clay Television, Inc. and Orange Park Florida T.V., Inc. (OPTV). In *Clay Television, Inc.*, FCC 82-417 (Sept. 21, 1982), the Commission permitted Clay Television, Inc. to amend its application to cure a violation of 47 C.F.R. 73.3572(b). Section 73.3572(b) provides that the transfer of a 50 percent ownership interest in an application constitutes a major change, requiring the removal of the application from consideration with other timely filed, mutually exclusive applications.

BACKGROUND

2. On the "A" cut-off date, December 29, 1980, Clay amended its application to report the transfer of a 26 percent ownership interest to an individual who was not a party to its original application. The "A" cut-off date is the last date for filing mutually exclusive applications and petitions to deny previously submitted applications. On the "B" cut-off date, April 2, 1981, Clay also amended its application to report the transfer of an additional 24 percent interest to two new owners who were not parties to Clay's original application. The "B" cut-off date is the last date for filing minor amendments by all mutually exclusive applicants and petitions to deny mutually exclusive applications subsequently filed as of the "A" cut-off date. OPTV argued before the ALJ that these transfers constituted a major amendment of Clay's application in violation of section 73.3572(b). Clay argued that, under the new processing procedures then used by the Broadcast Bureau (now Mass Media Bureau), amendments filed on or before the "A" cut-off date would not be considered in determining whether a major amendment had occurred. Asserting that he had no reason to doubt Clay's representations, the ALJ found there was a question concerning the Bureau's practices warranting Commission clarification. FCC 81M-3990 (Dec. 17, 1981).

3. The Commission found that the Bureau was following a processing practice of freezing applications on the "A" cut-off date for purposes of determining whether subsequent amendments resulted in a major ownership change. This practice, the Commission said, was wrong because section 73.3572(b) makes no distinction between amendments filed before or after the "A" cut-off date. *Clay Television, Inc.*, FCC 82-417 (Sept. 21, 1982) ¶ 8. Finding that 50 percent of Clay's ownership was transferred to persons other than those having ownership interests as specified in its original application, the Commission concluded that a major change had been effectuated under section 73.3572(b). *Id.* However, the Commission said that the confusion concerning the interpretation of section 73.3572(b), resulting from the Bureau's practice, warranted allowing Clay to amend its application to bring it into compliance with the rule. *Id.* at ¶ 10. [1] Thereafter, Clay amended its application and was ultimately awarded a construction permit by the Commission. *Clay Television, Inc.*, 95 FCC 2d 1167 (Rev. Bd. 1983), recon. denied, FCC 84R-25 (Apr. 18, 1984), review denied, 58 RR 2d 747 (1985). OPTV appealed.

4. The Court of Appeals for the District of Columbia Circuit vacated that portion of the Commission's decision which permitted Clay to amend its application to cure its violation of section 73.3572(b). *Orange Park Florida T.V., Inc. v. FCC*, 811 F.2d 664 (D.C. Cir. 1987). The Court said that the Commission could waive section 73.3572(b) if it found that Clay's violation resulted from reasonable reliance on the Bureau's then incorrect practices. *Id.* at 674-75. Because the Commission had assumed such reliance without an adequate factual foundation, the Court of Appeals remanded the proceeding to the Commission to determine if Clay had reasonably relied on the Bureau's practice. *Id.* at 675.

5. In an Order, *Clay Television, Inc.*, FCC 87I-054 (June 2, 1987), Clay and OPTV were granted an opportunity to file comments concerning the disposition of this proceeding. Clay was also asked to make a showing of its reliance, if any, on the Bureau's incorrect processing practices when Clay amended its application, as well as any other argument that it deemed pertinent to the proper disposition of this matter. Comments were filed on July 7 and supplemented on July 8, 1987 by Clay. Reply comments were filed on July 27, 1987 by OPTV.

6. Clay's comments include an affidavit from its attorney, Thomas L. Root, stating that when Clay amended its application, the language of then section 73.3572(b) did not indicate when the Commission would begin counting ownership changes for determining whether there had been a major change. Because the Bureau's new processing procedures permitted substitution of a completely new application on the "A" cut-off date, Mr. Root states that he reasoned that only ownership changes filed *after* the "A" date would be considered for determining whether there had been a major change. However, Mr. Root's review of Commission precedent uncovered no proceeding where the Commission had used such a methodology for assessing amendments to determine whether there had been a major change in violation of section 73.3572(b).

7. Mr. Root states that before amending Clay's application, he consulted with K. Gordon Oppenheimer, a supervising attorney in the Television Branch of the Video Services Division of the Bureau; and that Mr. Oppenheimer told him that the Bureau adhered to a policy of not counting ownership changes occurring on or before the

"A" cut-off date for determining whether there had been a major change. After the Court's remand in 1987, Mr. Root consulted with Mr. Oppenheimer to ascertain if he could recall their prior conversation. Mr. Oppenheimer had no recollection of the prior conversation but nevertheless said that he would have given the same advice that Mr. Root claims to have received had Mr. Oppenheimer been asked at the time Clay amended its application. Citing this evidence of reasonable reliance, Clay urges the Commission to: (1) find that Clay did in fact rely on the Bureau's incorrect interpretion of section 73.3572(b) when Clay amended its application on the "B" cut-off date; and (2) affirm the earlier grant of Clay's application based on those findings of reasonable reliance.

8. In its comments, OPTV argues that Mr. Root's showing of his efforts to determine whether Clay had violated the rule is inadequate and unclear. OPTV contends Mr. Root failed to document his research and that two cases should have alerted him that the Commission would apply the plain language of section 73.3572(b) to Clay's amendments: *Grace Missionary Baptist Church*, 80 FCC 2d 330 (1980), and *Thomas C. and Essie L. Collins*, 46 Fed. Reg. 25696 (May 9, 1981). Moreover, OPTV argues that because Mr. Oppenheimer cannot recall his prior conversations with Mr. Root, the statements attributed to Mr. Oppenheimer are hearsay. Citing *1010 Broadcasting, Inc.*, 59 RR 2d 1124 (1986), *Universal Satellite Corp.*, 51 RR 2d 310 (1982), and *Camelot, Inc.*, 61 FCC 2d 15 (1976), OPTV also argues that an applicant who relies on advice of a Commission employee assumes the risk that the advice is in error and is therefore obligated to examine the Commission's records, files, and rulings to ascertain the true procedures. Accordingly, OPTV urges the Commission to find that Mr. Root's research on the legal question presented was inadequate and unreasonable, and that his reliance on Mr. Oppenheimer's advice was likewise unreasonable; or, in the alternative, to remand the proceeding for further hearings so that OPTV can test Clay's showing.

DISCUSSION

9. We have reviewed the parties' comments, as well as Clay's showing in response to the questions that the Court of Appeals instructed the Commission to resolve on remand. We find that Clay has adequately answered those questions in its favor and that further proceedings in this protracted comparative licensing case would not serve the public interest. It has been over seven years since the first-filed application in this proceeding was tendered to the Commission, yet the people in and around Orange Park, Florida are still waiting for the new television service proposed in this proceeding. Moreover, for the reasons which follow, we find no merit to OPTV's contentions challenging Mr. Root's showing.

10. As we have already held in this proceeding, the Commission's long-standing interpretation of section 73.3572(b) is to consider *all* ownership changes made after an application is accepted for filing by the Commission. *Grace Missionary Baptist Church*, 80 FCC 2d at 335-37; *Thomas C. and Essie L. Collins*, 46 Fed. Reg. at 25697 ¶ 2-3. As recounted in his affidavit, Mr. Root researched this matter before Clay filed its "B" cut-off amendment. He found that neither *Grace Missionary Baptist Church* nor *Collins* involved amendments filed under the Bureau's *new* processing procedures. He further found, based on his research, that no Commission precedent existed as to how amendments filed under the new processing procedures should be treated for the purposes of determining whether a major amendment had occurred for purposes of section 73.3572(b). He concluded from this research that there remained an unresolved question concerning whether the Commission would consider amendments filed on or before the "A" cut-off date when determining whether there had been a major change. Hence, we cannot accept OPTV's contention that Mr. Root's research in this regard was either inadequate or unreasonable. To the extent that OPTV is suggesting that further research by Mr. Root would have uncovered Commission precedent answering this question, it has cited no cases, and we are unaware of any.

11. Recognizing that the rules implemented as a result of the Commission's new revised processing procedures permitted the filing of a completely new application as late as the "A" cut-off date, Mr. Root states that he then reasoned that Clay's "B" cut-off amendment would not violate section 73.3572(b). This interpretation was subsequently confirmed by Mr. Oppenheimer. Moreover, we find nothing inherently unreasonable in that interpretation. Indeed, we have already recognized the plausibility of such an incorrect interpretation of section 73.3572(b) in the earlier stages of this proceeding. See *Clay Television, Inc.*, FCC 82-415 (Sept. 21, 1982), where we permitted Clay to withdraw its "B" cut-off amendment without prejudice.

12. Nor do we agree with OPTV that Mr. Root's further efforts to ascertain the applicability of section 73.3572(b) to the Clay amendments were inadequate. The precedents cited by OPTV do not support its position. In *1010 Broadcasting, Universal Satellite,* and *Camelot*, the applicants did not attempt to ascertain the proper procedures by *independently* examining the Commission's records and/or precedent as Mr. Root did. Rather, the applicants in the three cases cited by OPTV relied *solely* on the advice of FCC employees as justification for their actions. Mr. Root did not engage in this kind of free-riding. In contrast, Mr. Root researched the matter and was unable to find any specific Commission precedent resolving the question concerning the interpretation of section 73.3572(b). Mr. Root consulted with Mr. Oppenheimer, who advised him that the Bureau adhered to the practice of not counting ownership changes occurring on or before the "A" cut-off date for determining whether there had been a major amendment pursuant to section 73.3572(b). Under these circumstances, we find that Mr. Root researched the Commission's practices with the degree of diligence required by *1010 Broadcasting*, 59 RR 2d at 1126, *Universal Satellite*, 51 RR 2d at 312 n.4, and *Camelot*, 61 FCC 2d at 16-17 ¶ 6, and that his reliance on Mr. Oppenheimer's advice was reasonable.

13. Nor are we troubled by Mr. Oppenheimer's present inability to recall his 1981 conversation with Mr. Root. In his position as a supervisory attorney overseeing the processing of television applications, Mr. Oppenheimer has frequent contacts with members of the communications bar and with television applicants. Under these circumstances, it is not surprising that he is unable to remember the specific conversation with Mr. Root, which occurred more than six years ago. Moreover, we have no reason to believe that the advice then given by Mr. Oppenheimer was anything other than that recounted by Mr. Root in his affidavit, because it correctly depicted the processing prac-

tices used by the Bureau at that time. We determined in the earlier stages of this proceeding that those practices resulted in a misapplication of section 73.3572(b). *Clay Television, Inc.*, FCC 82-417 (Sept. 21, 1982). In any event, if OPTV believed that Mr. Oppenheimer possessed information which would rebut Mr. Root's representations, it was incumbent upon OPTV to come forward with a such showing. It did not do so. For the reasons already set forth, we are convinced that Clay reasonably relied on the Bureau's incorrect processing practice, that good cause has been shown for waiving section 73.3572(b), and that the public interest will be served by granting Clay's application.

14. ACCORDINGLY, IT IS ORDERED, That the Memorandum Opinion and Order, *Clay Television, Inc.*, FCC 82-417 (released Sept. 21, 1982), IS AFFIRMED as modified herein; and that the application of Clay Television, Inc. (File No. BPCT-801010KE), IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTES

[1] The Commission has since amended the language of section 73.3572(b) to clarify this matter. *Processing of Broadcasting Applications*, 56 RR 2d 941, 945 (1984).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 85-124

In the Matter of

Federal-State Joint Board
On Determination of Interstate
and Intrastate Usage of
Feature Group A and
Feature Group B Access Service

ORDER

Adopted: February 25, 1988; Released: March 16, 1988

By the Commission:

1. On January 29, 1988, the National Association of Regulatory Commissioners, pursuant to Section 410(c) of the Communications Act,[1] nominated The Honorable Donald Vial, Commissioner on the California Public Utilities Commission, to serve as a member of the Joint Board in CC Docket 85-124.[2] A vacancy on the Joint Board has occurred as a result of the departure of The Honorable Louise V. McCarren of Vermont.

2. Pursuant to Section 410(c) of the Communications Act, we hereby appoint the following state commissioner to serve as a member of the Joint Board established in CC Docket 85-124 in lieu of Louise V. McCarren:

The Honorable Donald Vial
Commissioner
California Public Utilities Commission
California State Building
505 Van Ness Avenue
San Francisco, California 94102
Area Code (415) 557-3700

3. Accordingly, IT IS ORDERED that The Honorable Donald Vial shall serve on the Joint Board in CC Docket 85-124.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

FOOTNOTES

[1] 47 U.S.C. § 410(c) (1985).

[2] *See* letter from Paul Rodgers, Administrative Director, National Association of Regulatory Utility Commissioners, to Dennis R. Patrick, Chairman, Federal Communications Commission, dated January 29, 1988.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 85-124

In the Matter of

Federal-State Joint Board
On Determination of Interstate
and Intrastate Usage of
Feature Group A and
Feature Group B Access Service

ORDER

Adopted: February 25, 1988; Released: March 16, 1988

By the Commission:

1. On January 29, 1988, the National Association of Regulatory Commissioners, pursuant to Section 410(c) of the Communications Act,[1] nominated The Honorable James M. Fischer, Commissioner on the Missouri Public Service Commission, to serve as a member of the Joint Board in CC Docket 85- 124.[2] A vacancy on the Joint Board has occurred as a result of the departure of The Honorable Marvin R. Weatherly of Alaska.

2. Pursuant to Section 410(c) of the Communications Act, we hereby appoint the following state commissioner to serve as a member of the Joint Board established in CC Docket 85-124 in lieu of Marvin R. Weatherly:

The Honorable James M. Fischer
Commissioner
Missouri Public Service Commission
Post Office Box 360
Truman State Office Building
Jefferson City, Missouri 65102
Area Code (314) 751-3233

3. Accordingly, IT IS ORDERED that The Honorable James M. Fischer shall serve on the Joint Board in CC Docket 85-124.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

FOOTNOTES

[1] 47 U.S.C. § 410(c) (1985).

[2] *See* letter from Paul Rodgers, Administrative Director, National Association of Regulatory Utility Commissioners, to Dennis R. Patrick, Chairman, Federal Communications Commission, dated January 29, 1988.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Review of Technical and Operational Requirements of Part 73, Subpart C, FM Broadcast Systems — RM No. 5691

MEMORANDUM OPINION AND ORDER

Adopted: February 16, 1988; Released: March 16, 1988

By The Commission:

INTRODUCTION

1. The Commission has before it a *Petition for Rule Making* (*Petition*) filed by Carlos Juan Colon Ventura (Colon), licensee of WSAN(FM), Vieques, Puerto Rico, requesting amendment of Section 73.211(b)(3)(i) of the Commission's Rules to increase the maximum effective radiated power (ERP) for Class B FM stations on Puerto Rico and the Virgin Islands from 50 kW to 100 kW.[1] After extensive consideration of several options which would allow the petitioner and other Class B FM broadcasters to increase power without at the same time, creating an undue potential for interference, we have determined that it would not be in the public interest to grant petitioner's request for Rule Making. We will therefore deny the *Petition*.

BACKGROUND

2. Mainland Class B FM stations are authorized in geographical Zones I and I-A[2] to broadcast with the maximum facilities of 50 kW ERP and 150 m antenna height above average terrain (HAAT), with an overheight power reduction for HAATs above 150 m. [3] However, in Puerto Rico and the Virgin Islands, assigned to Zone I-A, the maximum facilities for Class B stations are 50 kW ERP and 472 m HAAT. These greater than usual facilities (super facilities) and the Zone I-A designation were granted to Puerto Rico in 1964, due to the unusual terrain and demographic factors that exist on the Island. Specifically, the super facilities were intended to overcome the effects of the Island's mountainous terrain, and the Zone I-A designation was intended to allow the service to grow and develop based on the population's predicted needs for future FM outlets.[4] In 1968, we authorized the use of super Class B FM facilities for the Virgin Islands, as well as for Puerto Rico.[5] We also authorized super Class A stations, and, later, super Class B1 stations, each with facilities that could theoretically extend the areas of service farther than their mainland counterparts.[6]

PETITION

3. The petition before us requests that we authorize an increase in the maximum ERP to 100 kW for Class B stations in Puerto Rico and the Virgin Islands. Stations wishing to take advantage of the power increase would be required to reduce HAAT in order to maintain their existing 1 mV/m coverage contour. The petitioner makes two significant points in support of his request. First, he notes that some Class B stations already at the maximum permissible power are precluded from increasing their antenna HAAT to the class limit because of Federal Aviation Administration (FAA) restrictions, and that there are some stations that are precluded from changing their antenna sites because of FM interstation spacing restrictions. He argues that allowing such stations to increase power beyond the maximum now permitted would allow them to use their allocated frequency more effectively, as they would be afforded additional flexibility in reaching their full, protected service areas. Second, he contends that most Class B assignments on Puerto Rico and the Virgin Islands, which nominally have Zone I interstation separations, meet the greater separation requirements of Class C1 stations, which are located in Zone II and have a maximum ERP of 100 kW. Petitioner therefore asserts that because Class C1 and super Class B stations are essentially the same in terms of coverage area, Class B stations in the region should be treated like mainland Class C1 stations and be allowed a maximum of 100 kW ERP.

DISCUSSION

4. We do not believe that granting the petitioner's request for a blanket power increase for all Class B FM stations on Puerto Rico and the Virgin Islands would be in the public interest. We have long recognized that "an increase in power increases interference more than it does service."[7] More recently, in BC Docket 80-90, we rejected a proposal to increase power beyond our established maximums to make up for restrictions on increasing antenna height.[8] The Commission is convinced that allowing all Class B stations to increase ERP to 100 kW would increase interference to co-channel and adjacent channel stations significantly. Class A stations operating on channels adjacent to the Class B stations would be especially adversely affected, as those stations could not increase power to offset infringement of their service areas resulting from the increased power of the Class B stations.

5. We also considered other rule changes that would allow some stations that are height restricted (by FAA or otherwise) to increase their power. We first attempted to verify that Colon was correct in his argument that most of the Class B stations meet the greater Class C1 interstation spacing requirements and could be allowed Class C1 facilities with little increase in interference. Our engineering analysis revealed that most Class B stations would not meet the spacing requirements for Class C1 stations. The staff conducted studies on every Class B and B1 station on Puerto Rico and the Virgin Islands, assuming that the Class B stations would be reclassified as C1, and the Class B1 stations would be reclassified as C2. As reclassified, only nine of the forty-three Class B and B1 FM stations would have interstation separations that would not be "short-spaced", or short of the minimum distance requirements to another station. Additionally, three of those nine stations possibly would be precluded from raising power

to 100 kW due to their proximity to the FCC monitoring stations on Puerto Rico, which our Rules protect from interference by limiting ambient power levels.[9]

6. Although we discovered that most Class B stations would not meet the greater Class C1 spacing requirements, we nevertheless considered the idea of redesignating all super Class B stations as Class C1 and authorizing the newly designated stations the same facilities as afforded mainland Class C1 stations.[10] This alternative is based upon comparison of Class C1 versus super Class B predicted signal strength contours. That comparison shows that interference among stations might not be increased an undue amount by allowing the Class B stations to operate with Class C1 facilities.[11] This alternative has major drawbacks, however. First, because under such a proposal many stations would be short-spaced according to our table of minimum interstation separations (Section 73.207 of the Rules), the table would no longer be appropriate and would leave us without a framework for granting new allotments. Second, redesignating the Class B stations as Class C1 would reduce a station's authorized class contour from 78 km to 72 km, a reduction in service area that the Islands' broadcasters likely would oppose. The assumption that the broadcasters would oppose an increase in power for a reduction in service area is strengthened by observing that only two comments were filed in support of the *Petition*, which would offer a power increase without a reduction in service area. Third and most important, we do not forsee that this action would significantly extend FM service to areas of the Islands that are not already served, or significantly increase the number of FM signals available in areas of the Islands that are currently receiving FM service.

7. In conclusion, despite our best efforts, we have been unable to find a basis upon which to proceed with Rule Making on a power increase in Puerto Rico and the Virgin Islands for Class B FM stations. While the Commission seeks to enhance the abilities of stations to better serve the needs of their audiences, we cannot overlook certain impediments. To maintain an orderly scheme of FM allotments and assignments within the present administrative framework and reduce the likelihood of harmful interference, the maintenance of power maximums is extremely important. We believe that adoption of the *Petition* would benefit the public only marginally and would benefit only a distinct minority of broadcasters. As discussed above, other schemes to allow stations on Puerto Rico and the Virgin Islands to increase beyond the maximum power of 50 kW have major drawbacks, and accordingly, do not justify a Rule Making.

8. Accordingly, IT IS ORDERED that the *Petition for Rule Making* filed by Juan Carlos Colon Ventura IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

FOOTNOTES

[1] *Petition* appeared on *Public Notice*, no. 1637, January 14, 1987. Comments filed in support of *Petition* by International Broadcasting Corp., licensee of WVOZ-FM, Carolina, Puerto Rico, and by HQ 103, Inc., licensee of WCHQ-FM, Camuy, Puerto Rico. Colon filed a reply to the comments.

[2] The United States, Puerto Rico, and the Virgin Islands, are divided into into Zones I, I-A, and II. To govern FM channel allotments and assignments, Class A, B1, and B stations are authorized for operation in Zones I and I-A, and Classes A, C2, C1, and C are authorized in Zone II. Requiring stations of the same or different classes to be geographically placed no closer to each other than certain minimum distance separations establishes the distribution of and proximity among FM allotments and assignments. These minimum separation requirements for the classes of stations authorized in Zones I and I-A allow more communities to have their own stations than the interstation separation requirements for the classes of stations assigned to Zone II. Thus, the Zone I and I-A designations are used for densely populated areas, such as the Northeast and the West Coast, and the Zone II designation is used for more sparsely populated areas, such as the South, Midwest, and the West.

[3] Overheight power reduction entails reducing the power below a fixed maximum (in this case 50 kW) when the reference HAAT (here 150 m) is raised so that as a result a station's coverage area (defined by its 1 mV/m contour, or "class contour) extends no farther from its transmitter than it would with maximum facilities.

[4] *See Fourth Report and Order* in Docket 14185, 3 RR 2d 1571 (1964). Originally, the maximum ERP was 25 kW, and the reference HAAT was 2000 ft (610 m).

[5] *See Report and Order* in Docket 18050, 13 RR 2d 153 (1968).

[6] Class A stations in Puerto Rico and the Virgin Islands are authorized a maximum ERP of 3 kW and a reference HAAT of 335 m. *See Report and Order* in BC Docket 81-421, 53 RR 2d 1349 (1983). Class B1 stations on the Islands are authorized a maximum ERP of 25 kW and a reference HAAT of 150 m. *See Order*, 49 FR 22089 (1984).

[7] *See First* Report and Order in Docket 14185, 33 FCC 309, 337 (1962).

[8] *See* Report and Order in BC Docket 80-90, 53 RR 2d 1550, 1568 (1983).

[9] For full exposition of the requirements, *see* § 73.1030(c) of the Rules.

[10] This action would allow stations to increase their maximum ERP to 100 kW, although at such ERP they would be authorized a HAAT of 299 m, 70 m less than requested in the Petition. It also would require that the zone designation of the Islands be changed to a modified Zone II.

[11] Specifically, comparison of three contours most often used to predict interference potential shows that the 40 dBu F(50,10) contour of the Class C1 extends 3 km farther than does that of the super Class B, the 54 dBu F(50,10) contour of the Class C1 extends 10 km less than does that of the super Class B, and the 100 dBu F(50,10) contour of the Class C1 extends 1 km farther than does that of the super Class B.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-107

In the Matter of

Radio Northwest Broadcasting Company
Mountlake Terrace, Washington

Licensee of Radio Station
KKZU(AM), Mountlake Terrace,
Washington

Order to Show Cause Why the
License of Station KKZU(AM),
Mountlake Terrace, Washington,
Should Not Be Revoked.

ORDER TO SHOW CAUSE AND NOTICE OF APPARENT LIABILITY

Adopted: February 17, 1988; Released: March 16, 1988

By the Commission:

1. The Commission has before it for consideration: (a) the license of Radio Northwest Broadcasting Company, for Radio Station KKZU(AM), Mountlake Terrace, Washington; and, (b) the results of its investigation into its unauthorized silent status.

2. Information before the Commission indicates that the captioned licensee notified the Commission on January 16, 1985, that, as of that date, the station was off the air due to financial problems. This notification was followed by a letter dated February 11, 1985, in which the licensee requested permission to remain silent for a period of ninety days. Subsequently, the licensee sought, and received, several extensions of its silent authority. Its authority to remain off the air, however, expired on August 15, 1986.[1] A March 1987 inspection of the station's facilities by personnel from the Commission's Seattle, Washington, field office revealed that the facilities of KKZU are vacant and that the station remains silent. Furthermore, the licensee was unable to comply with an April 13, 1987, Commission letter directing it to provide specific plans for its return to operation. Instead, the licensee repeated that it was attempting to find a buyer for the station. Neither an application for assignment of the license nor an application for transfer of control of the licensee has been filed with the Commission.

3. The Commission's Rules require a licensee to obtain Commission approval when operation is discontinued for more than 30 days.[2] Also, a licensee must forward its station's license to the Commission when operation is permanently discontinued. [3] This licensee's authority to remain silent expired on August 15, 1986, and it remains off the air without permission. Also, while the station appears to have discontinued operation permanently, the licensee has not submitted its license for cancellation.

4. Accordingly, IT IS ORDERED, That pursuant to Section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Radio Northwest Broadcasting Company IS DIRECTED TO SHOW CAUSE why the license for Radio Station KKZU(AM), Mountlake Terrace, WA, should not be REVOKED, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issue:

(a) To determine whether Radio Northwest Broadcasting Company violated Section 73.1740(a)(4) and/or 73.1750 of the Commission's Rules.

(b) To determine, in light of the evidence adduced under the foregoing issue, whether Radio Northwest Broadcasting Company possesses the requisite qualifications to be or remain licensee of the captioned radio station.

5. IT IS FURTHER ORDERED, That the Chief, Mass Media Bureau, is directed to serve upon Radio Northwest Broadcasting Company within thirty (30) days of the release of this Order, a Bill of Particulars with respect to Issues (a) and (b) above.

6. IT IS FURTHER ORDERED, That pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the evidence and the burden of proof shall be upon the Mass Media Bureau as to both issues.

7. IT IS FURTHER ORDERED, That to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause a written appearance stating that it will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause. *See* Section 1.92(a) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer, or the Chief Administrative Law Judge if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate Order will be entered. *See* Section 1.92(c) and (d) of the Commission's Rules.

8. IT IS FURTHER ORDERED, That if it is determined that the hearing record does not warrant an Order revoking the license for Station KKZU(AM), Mountlake Terrace, WA, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER FOR FORFEITURE shall be issued against Radio Northwest Broadcasting Company in an amount not exceeding twenty thousand dollars (20,000.00) for the willful and repeated violation of Sections 73.1740 and/or 73.1750 of the Commission's Rules.

9. IT IS FURTHER ORDERED, That this document constitutes a NOTICE OF APPARENT LIABILITY for willful or repeated violation of Sections 73.1740 and/or 73.1750 of the Commission's Rules. The Commission has

determined that in every case designated for hearing involving the potential revocation of a station license, it shall, as a matter of course, include a forfeiture notice so as to maintain the fullest possible flexibility of action. Since the practice of including such forfeiture notice is a routine procedure, such inclusion herein should not be viewed in any manner as suggesting or otherwise indicating what the initial or final disposition of this proceeding should be.

10. IT IS FURTHER ORDERED, That the Secretary, Federal Communications Commission, shall send a copy of this Order by *Certified Mail - Return Receipt Requested* to:

Radio Northwest Broadcasting Company
22002 64th Avenue West
Mountlake Terrace, WA 98043

and also to:

Radio Northwest Broadcasting Company
c/o Richard Cole
120 Second Avenue South
Edmonds, WA 98020-3512

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Secretary

FOOTNOTES

[1] By telegram dated July 14, 1987, the Commission informed the licensee that its August 13, 1986, and December 15, 1986, requests for permission to remain silent were denied. The Commission had not previously replied to these requests because of the expectation, created by the licensee, that in short order it would be applying for the assignment of its licensee. No further requests for authority to remain silent have been received.

[2] Section 73.1740(a)(4) provides:

> (4) In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

[3] Section 73.1750 provides:

> The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-363

In the Matter of

Amendment of Section 73.202(b),	RM-5838
Table of Allotments,	
FM Broadcast Stations.	
(Hampton, Iowa)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 11, 1988; Released: March 17, 1988

By the Chief, Allocations Branch:

1. At the request of Harold A. Jahnke (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 2 FCC Rcd 5612 (1987), proposing the allocation of Channel 255A to Hampton, Iowa, as the community's second local FM service. Petitioner filed comments reiterating his intention to apply for the channel, if allocated. No other comments were received. Channel 255A can be allocated to Hampton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[1]

2. We believe the public interest would be served by allocating Channel 255A to Hampton, Iowa, as proposed, since an interest in its use has been expressed. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **May 2, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Hampton, Iowa	255A, 285A

3. The window period for filing applications will open on **May 3, 1988,** and close on **June 2, 1988.**

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The *Notice* stated that a 4.3 kilometer (2.7 mile) southeast site restriction would be required to avoid a short-spacing to Station KEEZ-FM, Channel 256, Mankato, Minnesota. However, in light of the reclassification of Station KEEZ-FM as a Class C1, no site restriction is needed. The coordinates for this allotment are: North Latitude 42o, 44', 30"; West Longitude 93o, 12', 30".

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-106

In the Matter of

Amendment of Section 73.504(a), Table of Allotments, Noncommercial Educational FM Broadcast Stations. (Blythe, California) — RM-4997

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 11, 1988; Released: March 17, 1988

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 51 FR 12176, April 9, 1986, issued in response to a petition filed by the Escuela de la Raza Unida (petitioner), licensee of Class D noncommercial educational Station KERU-FM (Channel 203), Blythe, California, proposing the allotment of Channel 203A to that community. Supporting comments were filed by petitioner. Joint comments were also filed by the Corporation for Public Broadcasting, National Public Radio, and National Federation of Community Broadcasters (commentors). Petitioner filed reply comments.

2. Disposition of the instant allotment request is affected by the recent Commission action in MM Docket No. 87-140.[1] At the time this proceeding was initiated, petitioner was required to conform with the requirements of Section 73.207(b)(3) of the Commission's Rules. That section provided, in pertinent part, that, pursuant to the United States-Mexican Broadcasting Agreement,[2] domestic noncommercial educational FM (NCE-FM) allotments located within 320 kilometers (199 miles) of the United States-Mexican border (border area) must be separated from Mexican allotments and from each other by specified distances. While this proceeding was pending, the Commission amended its Rules in MM Docket 87-140. As a result, applicants for new NCE-FM broadcast stations or for upgrades of existing facilities within the border area may now base their spacings on the non-overlap of predicted signal strength contours (contour method) with regard to domestic NCE-FM stations, provided the minimum separation requirements are met with respect to Mexican and domestic commercial stations. Thus, the authorization of new NCE-FM stations are now determined on a protected contour basis for the border area as with the rest of the country. Accordingly, a NCE-FM applicant need not establish an allotment before applying for an authorization.

3. On the basis of the foregoing, the proposal herein is appropriate for consideration in the application, as opposed to the allotment, context. *See* footnote 4 of the *Report and Order* in MM Docket No. 87-140.

4. In view of the above, the comments filed in this proceeding are moot.

5. Accordingly, IT IS ORDERED, That the petition for rule making filed by the Escuela de la Raza Unida (RM-4997) IS HEREBY DISMISSED.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] *Report and Order, Review of Technical and* Operational Requirements: Part 73-C Noncommercial Educational FM Broadcast Stations, 52 FR 43764, November 16, 1987.

[2] "Agreement between the United States of America and the United Mexican States Concerning Frequency Modulation in the 88 to 108 MHz Band," ratified in Washington, D.C., November 9, 1972. Pertinent provisions of the Agreement are contained in 47 CFR Sections 73.207 and 73.504. *See*, Report and Order in Docket No. 19987, 50 FCC 2d 172 (1974).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-99

In the Matter of

Amendment of Section 73.202(b), RM-6074
Table of Allotments,
FM Broadcast Stations.
(Cornelia and Chatsworth, Georgia)

NOTICE OF PROPOSED RULE MAKING
and
ORDER TO SHOW CAUSE

Adopted: February 11, 1988; Released: March 17, 1988

By the Chief, Allocations Branch:

1. The Commission herein considers a petition for rule making filed by Habersham Broadcasting Company (petitioner), licensee of Station WCON-FM, Cornelia, Georgia, which seeks to substitute Channel 257C2 for Channel 257A at Cornelia. In order to permit the use of Channel 257C2 at Cornelia, petitioner has requested that Channel 255A be substituted for Channel 257A at Chatsworth, Georgia, and the license for Station WQMT(FM) be modified to specify the new Class A channel.

2. A staff engineering study indicates that both the Cornelia and Chatsworth substitutions can be made in compliance with the minimum distance separation requirements (at each licensee's present transmitter site).[1]

3. In view of the above, we shall propose to modify the license of Station WCON-FM (Channel 257A), to specify operation on Channel 257C2, as requested. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept other expressions of interest for use of Channel 257C2 at Cornelia. *See Modification of FM Broadcast Licenses to Higher Class Co - Channels or Adjacent Channels*, 51 FR 20290, June 4, 1986.

4. We are also issuing a *Show Cause Order* to Cohutta Broadcasting Company, licensee of Station WQMT(FM), Swainsboro, Georgia, seeking comments as to why its license should not be modified to specify operation on Channel 255A instead of Channel 257A. Commission policy requires that Station WQMT(FM) be reimbursed for the reasonable costs of changing its frequency. Petitioner has stated its willingness to do so.

5. Comments are invited on the proposal to amend the FM Table of Allotments (Section 73.202(b) of the Rules) with respect to the following communities:

	Channel No.	
City	Present	Proposed
Chatsworth, Georgia		257A 255A
Cornelia, Georgia		257A 257C2

6. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Cohutta Broadcasting Company, licensee of Station WQMT(FM), Chatsworth, Georgia, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 255A as proposed herein instead of the present Channel 257A.

7. Pursuant to Section 1.87 of the Commission's Rules, Cohutta Broadcasting Company, may, not later **May 9, 1988**file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Cohutta Broadcasting Company, to furnish additional information. If Cohutta Broadcasting Company raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Cohutta Broadcasting Company will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the licensee of Station WQMT(FM) as follows: Cohutta Broadcasting Co., Box 738, Chatsworth, Georgia 30705.

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **May 9, 1988**, and reply comments on or before **May 24,1988**, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Edward W. Hummers or
Frank R. Jazzo
Fletcher, Held and Hildreth
1225 Connecticut Ave., N.W., Suite 400
Washington, D.C. 20036

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission

consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates for the proposed operation of Channel 257C2 at WCON-FM's present site are: 34-30-57 - 83-32-20, and for Channel 255A at Chatsworth, 34-45-29 - 84-43-59.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-108

In the Matter of

Amendment of Section 73.202(b), RM-6085
Table of Allotments,
FM Broadcast Stations.
(Yreka, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 25, 1988; Released: March 17, 1988

By the Deputy Chief, Policy and Rules Division:

1. Dalmatian Enterprises, Inc. (petitioner), licensee of Station KYRE(FM) (Channel 249A), Yreka, California, has filed a petition for rule making seeking the substitution of Channel 249C1 for Channel 249A and modification of its license accordingly to specify operation on the higher power channel.

2. Although petitioner has requested a preferred site 14.0 kilometers south of Yreka[1] to accommodate its proposal, it recognizes that site is short spaced to a rule making proposal to substitute Channel 249B for Channel 249A at Oroville, California,[2] and to modify the license of Station KEWE(FM), accordingly (RM-5928). Petitioner asserts that due to terrain factors, in tandem with the requirements of Section 73.207(b) of the Commission's Rules, it is not possible to resolve the conflict by locating its transmitter elsewhere. Rather, petitioner urges that if Channel 249B1 is allotted to Oroville in lieu of Channel 249B, the short-spacing would be eliminated.

3. A staff engineering study has determined that Channel 249C1 can, in fact, be allotted to Yreka in conformity with the technical requirements of Section 73.207(b) of the Commission's Rules, provided the transmitter therefor is sited in an area at least 7.0 kilometers north [3] of the community. Since we cannot determine from petitioner's proposal that terrain factors restrict the use of proposed Channel 249C1 to a very limited area, and since a nonconflicting site has been established preliminarily to accommodate the proposal, petitioner's suggested substitution of Channel 249B1 at Oroville will not be entertained.

4. On the basis of the above, we shall propose to substitute Channel 249C1 for Channel 249A at Yreka, California, as requested. Additionally, we shall propose to modify the Class A license of Station KYRE(FM) to specify operation on Channel 249C1. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require that petitioner demonstrate the availability of an additional equivalent channel for use by other interested parties.

5. Therefore, in order to provide Yreka with its first wide coverage FM service, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Yreka, California		249A 249C1

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **May 9, 1988,** and reply comments on or before **May 24, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

David Tillotson, Esq.
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FOOTNOTES

[1] Reference coordinates at petitioner's preferred site are as follows: 41-36-13; 122-38-02.

[2] The distance between petitioner's preferred site and the Oroville proposal is 250.2 kilometers whereas 270 kilometers is required between Class B-C1 co-channels.

[3] Reference coordinates of the restricted site are: 41-47-34; 122-38-24.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-282

In the Matter of

Amendment of Section 73.202(b),	RM-5569
Table of Allotments,	
FM Broadcast Stations.	
(Fort Bragg, California)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 25, 1988; Released: March 17, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 2 FCC Rcd 4621 (1987), issued in the above-captioned proceeding in response to a petition filed on behalf of Charles W. and Josephine R. Stone, d/b/a Fort Bragg Broadcasting Company (petitioner), proposing the allotment of Channel 244A to Fort Bragg, California, as that community's third local FM service. Supporting comments were filed by petitioner reaffirming its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by allotting Channel 244A to Fort Bragg since it could provide an additional local FM broadcast service to the community for the expression of diverse viewpoints and programming.

3. As indicated in the *Notice*, Channel 244A can be allotted to Fort Bragg in conformity with the minimum distance separation requirements specified in Section 73.207(b) of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **May 2, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to Fort Bragg, California, as follows:

City	Channel No.
Fort Bragg, California	237A, 244A, 249A

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. The window period for filing applications on Channel 244A at Fort Bragg, California will open on **May 3, 1988,** and close on **June 2, 1988.**

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER

Adopted: February 25, 1988; Released: March 18, 1988

Springfield Independent Television Company, Inc. 8940-LJ
3440 Clear Lake Avenue
Springfield, Illinois 62702

Gentlemen:

This refers to the application (BALCT-870909KF) for Commission consent to assign the license of station WCCU(TV), channel 27, Urbana, Illinois, from Urbana 27, Inc. (Urbana) to Springfield Independent Television Company, Inc. (Springfield). Springfield is also the licensee of station WRSP-TV, channel 55, Springfield, Illinois, and the acquisition of WCCU will result in overlap of the Grade B contours of the stations.[1] You propose to operate WCCU "primarily as a satellite" of WRSP-TV and request that the assignment application be granted pursuant to the "satellite exception" provision to the Commission's duopoly rule for television stations, Section 73.3555(a) (3).[2]

Section 73.3555(a)(3) of the Commission's Rules provides that no license for a television station shall be granted to any party if such party directly or indirectly owns, operates, or controls one or more television broadcast stations and the grant of such license will result in overlap of the Grade B contours of the existing and proposed stations. Note 5 to the rule, however, exempts television stations that are "primarily satellite operations" from a strict application of the Grade B overlap prohibition. Under Note 5, the Commission considers satellite proposals on a case-by-case basis in order to determine whether common ownership, operation, or control of the stations would be in the public interest.

In support of your request, you argue that it is impossible for WCCU, a new independent station, to operate successfully in Urbana on a stand-alone basis because of market coverage problems, heavy cable penetration, and the numerous other media serving the area. You claim that both WCCU and WRSP-TV are operating at a deficit. Therefore, you believe that the operation of WRSP-TV and WCCU as parent-satellite combination offers the only opportunity for the financial viability of the stations. Specificallly, you state that Urbana is located within the Springfield-Decatur-Champaign ADI (area of dominant influence) which, according to Arbitron, is the 64th largest television market. This market, you aver, stretches approximately 80 miles in length, with Springfield at the west end, Decatur in the middle, Champaign at the east end, and Urbana five miles northeast of Champaign. Due to the length of the market, you claim that it is impossible for one station to cover it entirely, unless the station is centrally located. You assert that two of the other television stations in the market already have the use of another facility to achieve sufficient coverage.[3] You note that at the time WCCU began program operation in March 1987, Urbana had entered into a programming agreement with you under which WCCU would duplicate all of the WRSP-TV programming, except for certain public service announcements.[4]

You argue that WRSP-TV, as the only independent station in the market, is at a critical competitive disadvantage with the other stations without effective coverage of the entire market. In this regard, you note that you acquired WRSP-TV in May 1982, when the station was on the verge of bankruptcy. You claim that, since that time, you have invested over 2,285,000 in upgrading the facilities of WRSP-TV in order to become a competitive entity. You state, however, that in spite of these improvements WRSP-TV has suffered losses in excess of5,000,000. Even with the programming agreement with WCCU, you state that WRSP-TV has been unable to generate sufficient revenues to make it a profitable and viable entity. You claim that your ability to obtain firm advertising commitments has been hindered because you have been unable to exercise sufficient control over WCCU's preemptions of particular advertising announcements or programs.

In support of the proposition that such guarantees may only be made if the stations are under joint ownership, you submitted a letter from an advertising agency cancelling its order due to preemptions by WCCU. By operating the stations under joint ownership. you maintain that you will be able to guarantee local advertisers and agency time buyers that their advertising will be aired, as promised, at both ends of the market. Additionally, you state that by controlling both stations, you will be better able to coordinate and implement the marketing and promotion of the stations, and you will have flexibility in making immediate adjustments in addressing unforeseen circumstances in marketing strategies. You state that joint operation of the stations would result in immediate cost savings, despite modest increases in cost resulting from the production of local programming from the studio in Urbana, because there would be no need for duplicate clerical, accounting, sales, programming, and promotion staff. Further, you state that combined ownership will eliminate existing confusion in the market on behalf of both advertisers and the public as to who owns the WCCU facility and what its operating policies are. You believe that these enhancements to the station's image and credibility will translate directly into increased sales. Thus, you claim that with your knowledge of broadcasting, and the cost savings of joint ownership, the opportunity for the financial viability of WRSP-TV will be enhanced greatly.[5]

You argue that it would be impossible for WCCU, a new independent station, to operate successfully in Urbana on a stand-alone basis because of market coverage problems, heavy cable penetration, and the numerous other media serving the area. You note that cable penetration in the market ADI is 65%, in the Metropolitan area of Urbana, 67%, in Champaign County, where Urbana is located, 66.3%, and in adjacent Vermillion County, 69.6%. You state that there are 25 radio and 10 television stations licensed to the Springfield- Decatur-Champaign market.[6] Additionally, you point out that the Champaign-Urbana area is served by 2 daily and 2 weekly newspapers with significant circulation: *The Champaign - Urbana Gazette*, *The Daily Illini*, *Illini Week* and *The Illini Times*.

Urbana claims that the sale of WCCU is made necessary as a result of losses totaling244,558, which were incurred during the first eight months of operation. Projected losses

for the next 12 months will exceed 240,000. Urbana contends that its financial problems have been caused by the lack of national spot sales income combined with the competition of established affiliated stations in the market that have satellite operations. Urbana submitted a letter from Brian E. Cobb of Media Venture Partners setting forth his opinions concerning alternatives available to WCCU. After reviewing the marketplace and prospects, Mr. Cobb concludes that independent stations are not appealing to buyers for economic reasons, and that it would not be worthwhile to sell WCCU or WRSP-TV because there are no qualified buyers that could operate the stations successfully. He also believes that if the ADI is to be served on a regular basis by an independent UHF station, the two stations should be under one umbrella. Such operation, he states, would improve coverage and quality of programming in the area.

In conclusion, you also aver that operating WCCU as a satellite of WRSP-TV would insure the continuation of Urbana's only local television service. You promise that offices and a studio will be maintained in Urbana, from which local public affairs programming for the first time, will originate, and that such programming will start immediately. You claim that the small overlap is consistent with past precedent, is less than that recently approved by the Commission for WCIA(TV) and its satellite in Springfield, and is similar to the overlap area of WICS and WICD which operate under a programming agreement, although they are not commonly owned. A grant of your request, you assert, would not result in any undue concentration of control because there are numerous media services available in the market.

In the past, we have authorized satellite stations, in situations where overlap would exist between the parent and the satellite station, as a means of providing television service to small communities having an insufficient economic base to support a full-service television operation. One means of carrying out the goal of bringing service to these communities is reflected in Note 5 to Section 73.3555(a)(3) of the Rules, which relaxes the multiple ownership rules for a station operating as a satellite or "primarily as a satellite." When satellites were first considered, they were authorized only in communities having no local television service. *Multiple Ownership Rules*, 45 FCC 1728,1735 (1964). That standard has evolved over the years in order to provide the public in smaller markets with a choice of programs. Thus, even where a full-service station already serves an area, we have authorized competing satellite operations so long as the applicant has undertaken to establish a local studio and provide some local programming, and has shown other public interest factors sufficient to justify satellite operation. *See , e. g., Midcontinent Broadcasting Co. of Wisconsin*, 12 FCC 2d 111 (1968); *Meyer Broadcasting Co.*, 67 FCC 2d 593 (1978); *aff d sub nom., Dickinson Broadcasting Corp. v. FCC*, 593 F.2d 1371 (D.C. Cir. 1979).

On the basis of the information before us, we believe that a sufficient showing has been made to justify authorization of a satellite operation in Urbana. The overlap to be created in this case is not substantial, amounting to only 1.5% of WRSP-TV's population and 3.3% of WCCU's population, and is consistent with Commission precedent. You have shown that the geographical area of the Springfield-Decatur-Champaign market is unusual due to its extreme length. Thus, only stations that are centrally located or have use of other facilities can serve the entire market. Since Springfield is located at the West end and Urbana is located at the East end of the market, neither WRSP-TV nor WCCU is able to cover the entire market. The problems facing the stations are compounded by the fact that they are UHF independent stations struggling to compete effectively against established network affiliated stations that have the use of other facilities to achieve sufficient coverage. and the existing programming arrangement with the seller has proved unsuccessful. You have shown that since beginning operation in March 1987, WCCU has sustained losses totaling 245,558, with no likelihood of any improvement during the next 12 months, and that Springfield, after expending over2,285,000 and entering into a programming agreement with WCCU, has been unable to make WRSP-TV profitable operation. Additionally, since acquiring WRSP-TV in May, 1982, you have sustained losses in excess of5,000,000 in your efforts to provide the market with a local independent television station.

Based on the foregoing, we believe that allowing WRSP-TV and WCCU to operate together may offer the only opportunity for the stations to enhance their financial viability and to compete effectively in a competitive market. The economies of joint operation also will allow the stations to cover the entire market. Significantly, you will maintain a local studio in Urbana so that WCCU, for the first time, will commence broadcasting local programming. Thus, grant of the application would foster the development of Urbana's first commercial television outlet station providing locally originated programming. In view of the other media services available, we think that a grant of the application will not result in any undue concentration of economic power contrary to the public interest.

Having found that the applicants are fully qualified and that a grant of the application will serve the public interest, your application for Commission consent to assign the license of station WCCU(TV), Urbana, Illinois, from Urbana 27, Inc. to Springfield Independent Television Company, Inc., IS GRANTED.

BY DIRECTION OF THE COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTES

[1] Springfield notes that the overlap would encompass 294 square miles and 10,501 persons, which is 8.6% of WCCU's Grade B area (3.3% of its population) and 3.1% of WRSP's Grade B area (1.5% of its population). The Grade B contour of WCCU encompasses a population of 320,918, and the Grade B contour of WRSP-TV encompasses 683,545 persons.

[2] A 100 percent satellite station retransmits all of the programming of its parent, while a station categorized as "primarily a satellite" airs most of its parent's programs but originates less than five percent of its programming locally, *See , e. g., Amaturo Group, Inc.*, 68 FCC 2d 899 (1978).

[3] You state that WCIA(TV), channel 3 (CBS), Champaign, has a satellite station in Springfield (WCFN(TV); WICS(TV), channel 20 (NBC), Springfield, and WICD(TV), channel 15 (NBC), Champaign, pursuant to a programming agreement, duplicate each

other's programming, except for local news; and that WAND(TV), channel 17 (ABC), Decatur, is centrally located in the market and is able, by directionalizing its signal, to place at least a Grade A contour over both Springfield and Champaign. Nonetheless, you state that station WAND(TV) uses a translator station in Danville to improve its coverage at the eastern end of the market.

[4] You state that it is more economical for network affiliated stations in the market to operate under a rebroadcasting agreement than independent stations because they receive a much larger share of market revenue, and they receive a steady flow of programming for much of the broadcast day for which they are compensated by the network. You maintain that independent stations must survive on smaller market revenue shares and must purchase large amounts of expensive syndicated programming.

[5] Another factor contributing to WRSP-TV's inability to garner sufficient revenue, you aver, is its inability to obtain cable coverage on cable systems throughout the entire market. The cable system in Urbana has a 35-channel capacity, the cable systems in Springfield and Decatur each have a 30-channel capacity.

[6] The following television stations are licened to the Springfield-Decatur-Champaign market; WAND(TV), channel 17 (ABC), Decatur; WFHL, channel 23 (IND), Decatur; WCFN(TV), channel 49 (CBS), Springfield; WICS(TV), channel 20 (NBC), Springfield; WRSP-TV, channel 55 (IND), Springfield; WCIA, channel 3 (CBS), Champaign; WICD(TV), channel 15 (NBC), Champaign; WCCU, channel 27 (IND), Urbana; and WILL-TV, channel 12 (PBS), Urbana.

SEPARATE STATEMENT OF COMMISSIONER PATRICIA DIAZ DENNIS

In Re: Application for Consent to Assignment of License of Station WCCU (TV), Urbana, Illinois, from Urbana 27, Inc. to Springfield Independent Televison Company, Inc.

While I support the Commission's conclusion that operation WCCU (TV) "primarily as a satellite" of WRSP-TV would serve the public interest, I reiterate the concerns expressed in my separate statement in *Applications of Central Minnesota Television, Inc. ("Central Minnesota")* in which the Commission approved operation of KCMT (Alexandria, Minnesota) "primarily as a satellite" of WCCO-TV (Minneapolis, Minnesota). Neither of these decisions predeterminers the outcome of the Commission's pending Notice of Proposed Rule making concerning a review of the Commission's policies and rules for television satellite stations in MM Docket No. 87-8. *See Notice of Inquiry/Notice of Proposed Rule making*, 2 FCC Rcd. 1359 (March 2, 1987) ("Notice").

In that Notice, the Commision has opened *all* aspects of our television satellite policy for comment, with special emphasis on examining the desireability of satellites in larger markets and appropriate limits on locally-originated programming for satellites in rural sparsely populated areas.

As I previously noted in my separate statement in *Central Minnesota*, because the Commission has not yet completed its review of the comments in Docket No. 87-8, it is uncertain how future applications for operating stations as satellites or "primarily as a satellite" will be analyzed. This decision to allow WCCU to operate "primarily as a satellite" is within existing policy, and does not implicate the outcome of the Commission's general review of its satellite policy in Docket No. 87-8.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

John F.Luhmann (assignor) and John W. Starr (assignee) File No. BPFT-860310TY

For Consent to Assignment of Construction Permit for FM Broadcast Translator Station K240BM Vail, Colorado

ORDER

Adopted: February 25, 1988 Released: March 18, 1988

By the Commission:

1. The Commission has before it for consideration an application for review filed on June 25, 1987, by Rocky Mountain Wireless, Inc. (Rocky Mountain). By way of background, on October 29, 1986, the Chief, Audio Services Division, granted the above captioned assignment application and denied the informal objections of Rocky Mountain. By letter dated May 26, 1987, the Chief, Audio Services Division, denied Rocky Mountain's petition for reconsideration of his October 29, 1986, action. The current application for review followed.

2. We have reviewed the staff's action denying Rocky Mountain's petition for reconsideration and we find no error. ACCORDINGLY, IT IS ORDERED, that pursuant to 47 C.F.R. Section 1.115(g), the Application for Review filed on June 25, 1987, by Rocky Mountain Wireless, Inc. IS DENIED.

3. IT IS FURTHER ORDERED, That the Chief, Mass Media Bureau, shall send by Certified Mail - Return Receipt Requested, a copy of this Order to each of the parties to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 87-1

In the Matter of

Amendment of Part 90 of the
Commission's Rules to Revise
the Co-channel Assignment
Standards for Trunked SMR
Systems in the Seattle,
Washington Area

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 29, 1988; Released: March 18, 1988

By the Commission: Commissioner Quello concurring and issuing a separate statement.

INTRODUCTION

1. The Commission has before it a *Notice of Proposed Rule Making (Notice)* [1] and the comments filed in response thereto[2] concerning the co-channel assignment standards for trunked Specialized Mobile Radio (SMR) systems located in the Seattle, Washington area. Upon review of this record, we have decided to increase the minimum co-channel separation requirement to 105 miles for 800 MHz trunked SMRs located on certain, specified mountaintops around Seattle.

BACKGROUND

2. This proceeding was initiated to address an interference situation first brought to our attention by a group known as the Western Washington Cooperative Interference Committee (WWCIC). This group reported that the 70 mile co-channel separation requirement for 800 MHz trunked SMR systems was insufficient to prevent interference in Seattle because the terrain of the area does not conform to the model used to develop the 70 mile standard.[3] The report noted that the Puget Sound region is characterized by high mountain peaks surrounding deep valleys. By locating transmitters on these mountains, licensees are able to achieve larger service areas than the Commission originally envisioned for the SMR service. After this report was confirmed by the Commission's Field Operations Bureau, we proposed to increase the minimum separation requirement to 105 miles.[4]

3. The commenters to the *Notice* unanimously agreed with the basis of the *Notice*. Most commenters, however, suggested some refinements to the Commission's proposal in an attempt to minimize restrictions on licensees' flexibility. These suggestions are discussed below.

COMMENTS

4. Most commenters suggested that we attempt to find a solution that meets the needs of providing increased interference protection without severely limiting frequency reuse in the area. ASNA, for example, pointed out that because Seattle is near the Canadian border fewer channels are available for SMR use because of international agreements.[5] ASNA stated that an across-the-board increase in the co-channel separation requirement would further diminish the availability of SMR service in the Seattle area. ASNA commnts at 3. Generally, the commenters noted that the problem is largely caused by the practice of locating transmitters at high elevations and urged that we focus our attention on this aspect of the problem.

5. Motorola, NABER, and Ratelco all commented that any increased separation requirement should apply only to certain, specified mountaintops. Motorola comments at 2, NABER comments at 4, Ratelco comments at 1. Motorola and NABER identified the following mountains as locations that need increased protection: Mount Constitution, Squak Mountain, Lyman Mountain, Tiger Mountain, Cultus Mountain, Devils Mountain, Gunsite Ridge, McDonald Mountain, Gold Mountain, Maynard Hill, Buck Mountain, North Mountain, and Cougar Mountain. Motorola stated that this list represents approximately half of the land mobile communications transmitter sites in the region. Motorola coments at 3. Ratelco also provided a list of mountains and named 11 of the 13 sites identified by Motorola and NABER (Ratelco omitted North Mountain and Devils Mountain). Ratelco's list also included six additional sites: Three Sisters Mountain, Grass Mountain, Capitol Peak, Green Mountain, Spar Pole Hill, and Rattlesnake Mountain. Ratelco comments at 1. In its reply comments, SIRSA agreed that the sites identified by NABER and Motorola. SIRSA reply comments at 4.

6. Motorola, NABER, and SIRSA also suggested that the increased co-channel separation should also apply to trunked systems in the non-SMR pools as well as to conventional systems that have exclusive use of a frequency.[6] Motorola comments at 3, NABER comments at 3, SIRSA reply comments at 5. In this regard, NABER pointed out that the propagation characteristics of trunked and conventional systems are identical. NABER comments at 4. Therefore, as stated by SIRSA, the same factors that favor imposition of a 105 mile co-channel separation requirement for SMR systems also favor providing greater protection for non-SMR facilities. SIRSA reply comments at 5. Motorola stated that uniform treatment of all private land mobile frequencies in the Seattle area would ease the administrative work of the Commission and would provide for consistent treatment of channels when there is intercategory sharing or trunking of conventional frequencies. Motorola comments at 3. Finally, the commenters urged us to apply any rule changes adopted in this proceeding to the new private land mobile frequencies at 900 MHz.[7] *See*, *e. g.*, Motorola comments at 3, SIRSA reply comments at 7.

DECISION

7. We agree with the commenters that any interference solution for the Seattle area should apply only where there is a specific need. Obviously, it would not be spectrally efficient to require two co-channel stations operating at low elevations to be separated by 105 miles when 70 miles

would provide adequate interference protection. Therefore, we shall modify our proposal to apply the 105 mile separation requirement to specified locations only. While the number of mountains identified by the commenters is rather large, the commenters are familiar with the Seattle area and have a strong interest in eliminating interference without unduly reducing spectrum efficiency. Futhermore, no comments objected to the sites identified. Therefore, the 105 mile separation requirement will apply to stations locating at all mountains listed in the comments of Motorola, NABER, and Ratelco.

8. While the commenters urge us to extend the increased separation requirements to exclusive conventional and non-SMR trunked systems, regulatory and operational differences warrant limiting the scope of the new requirements. First, non-SMR trunked systems authorized under Subpart S of Part 90, 47 C.F.R. §§ 90.601 - 90.657, utilize the services of frequency coordinators, whereas SMR trunked systems are assigned directly by the Commission.[8] Coordinators are in a better position to consider the local terrain of a particular environment and, therefore, can readily engineer-in co-channel assignments. Thus, a set mileage separation by rule may be inconsistent with maximizing spectrum use. We believe continuation of the present non-SMR assignment criteria, which are based on prohibited overlap of service and interference contours, is a more flexible means of accomplishing our goals.[9] While a coordinator may use the SMR mileage figures as guidelines, it may also find it necessary or appropriate to deviate from these numbers. Therefore, we will not specify a fixed separation requirement for non-SMR trunked systems but will modify Section 90.621 of the Rules, 47 C.F.R. § 90.621, to alert potential applicants that separations greater than normal may be required in some areas of the country.[10]

9. It is also unnecessary to modify the assignment criteria for conventional systems that have exclusive use of a frequency. There are operational differences between conventional and trunked systems that justify different assignment criteria for such systems. For instance, if a trunked system receives interference on the control channel, it is possible that the entire control mechanism could be affected, causing problems on all channels operated by the system. This would not be the case for conventional systems. This fact, coupled with the presence of frequency coordinators,[11] leads us to conclude that licensee flexibility in locating transmitters is furthered by continuing to employ the present assignment criteria for conventional systems. For these reasons, we shall not increase the required separation for conventional systems.

10. With regard to extending the scope of these new assignment criteria to the new 900 MHz spectrum, this spectrum will not be available for use in the Canadian border area until an agreement is reached with the Canadian government. When an agreement is reached, we will make the appropriate modifications so that the new requirements apply to 900 MHz systems. On those mountains identified in this *Order* that are outside the Canadian border area (where the 900 MHz spectrum is now available) the new separation requirements will be applied. Also, we are making an editorial amendment to Section 90.615 in order to accurately reflect the boundary of the Canadian border area.

11. Finally, existing systems will be grandfathered at their present sites except for those with authorizations that were conditioned on the outcome of this proceeding. In order to remedy interference between existing systems, we will permit and encourage existing licensees in the Seattle area to exchange frequencies voluntarily among themselves. Also, any channels recovered through our channel recovery program will be offered first to existing licensees who wish to change frequencies to correct any interference problem. Licensees wishing to explore these options should contact the Commission's Licensing Division in Gettysburg, Pennsylvania.

12. *REGULATORY FLEXIBILITY ACT FINAL ANALYSIS*

I. ***Need and purpose of this action*** **:**

The Commission takes this action to reduce the likelihood of interference between co-channel SMR trunked private land mobile systems operating at 800 MHz in the Seattle, Washington area.

II. ***Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis*** **:**

No comments were received in response to the Initial Regulatory Flexibility Analysis.

III. ***Significant alternatives considered and rejected*** **:**

The Commission considered all alternatives presented in response to the *Notice*, as reflected in the adopted decision. The major alternative offered by commenters urged that the original proposal be limited in its scope. This was ultimately accomplished by applying the increased separation requirements only at certain mountaintop locations instead of in the entire Seattle region.

This item will not have a negative impact on small entities and should prove beneficial by providing increased protection from interference. Also, the decision to apply the increased spacing requirement to specified locations only instead of to the entire Seattle area will prove beneficial because it will allow more SMRs to conduct business in the Seattle area.

PAPERWORK REDUCTION ACT STATEMENT

13. The action herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to authority granted under Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), Part 90 of the Commission's Rules is AMENDED effective **May 2, 1988,** as set forth in the Apppendix below.

15. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

APPENDIX

Title 47, Part 90 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303 unless otherwise noted.

2. 47 C.F.R. § 90.362 is amended by adding new paragraph (c)(3) to read as follows:

§ 90.362 Selection and assignment of frequencies.

* * * * *

(c) * * *

(3) Trunked systems located in the State of Washington at the following locations shall be separated from co-channel systems by a minimum of 168 km (105 miles). Locations within one mile of the geographical coordinates listed in the table will be considered to be at that site.

North West

Site Name	Latitude	Longitude
Mount Constitution	48-40	122-50-24
Lyman Mountain	48-35-42	122-09-35
Cultus Mountain	48-25-31	122-08-54
Gunsite Ridge	48-03-23	121-51-37
Gold Mountain	47-32-52	122-46-52
Buck Mountain	47-47-06	122-59-30
Cougar Mountain	47-32-40	122-06-30
Squak Mountain	47-30-15	122-03-30
Tiger Mountain	47-30-14	121-58-28
Devils Mountain	48-21-53	122-16-02
McDonald Mountain	47-20-12	122-51-26
Maynard Hill	48-00-59	122-55-31
North Mountain	47-19-08	123-20-44
Green Mountain	47-33-41	122-48-27
Capitol Peak	46-58-22	123-08-17
Rattlesnake Mountain	47-28-10	121-49-13
Three Sisters Mountain	47-07-20	121-53-30
Grass Mountain	47-12-15	121-47-38
Spar Pole Hill	47-02-52	122-08-35

3. 47 C.F.R. § 90.615 is revised to read as follows:

§ 90.615 Frequencies available for conventional systems in the 806- 809.750/851-854.750 MHz bands.

Channels 1-150 are available to eligible applicants in all services only for conventional system use. The frequencies are available in areas farther than 110 km. (68.4 miles) from the U.S./Mexico border, and farther than 140 km. (87.0 miles) from the U.S./Canadian border.

4. 47 C.F.R. § 90.621 is amended by adding new paragraph (b)(3), and by revising paragraph (c) to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) * * *

(3) SMR trunked systems located in the State of Washington at the following locations shall be separated from co-channel systems by a minimum of 168 km (105 miles). Locations within one mile of the geographical coordinates listed in the table will be considered to be at that site.

North West

Site Name	Latitude	Longitude
Mount Constitution	48-40-48	122-50-24
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Gold Mountain	47-32-52	122-46-52
Buck Mountain	47-47-06	122-59-30
Cougar Mountain	47-32-40	122-06-30
Squak Mountain	47-30-15	122-03-30
Tiger Mountain	47-30-14	121-58-28
Devils Mountain	48-21-53	122-16-02
McDonald Mountain	47-20-12	122-51-26
Maynard Hill	48-00-59	122-55-31
North Mountain	47-19-08	123-20-44
Green Mountain	47-33-41	122-48-27
Capitol Peak	46-58-22	123-08-17
Rattlesnake Mountain	47-28-10	121-49-13
Three Sisters Mountain	47-07-20	121-53-30
Grass Mountain	47-12-15	121-47-38
Spar Pole Hill	47-02-52	122-08-35

(c) Trunked systems authorized on frequencies in the Public Safety, Industrial/Land Transportation, and Business categories will be protected solely on the basis of predicted contours. Coordinators will attempt to provide a 40 dBu contour and to limit co-channel interference levels to 30 dBu over an applicant's requested service area. This would result in a mileage separation of 70 miles for typical system parameters. Applicants should be aware that in some areas, *e. g.*, Seattle, Los Angeles, and northern California, separations greater than 70 miles may be appropriate. Separations will be less than 70 miles where the requested service areas, terrain, or other factors warrant reduction. In the event that the separation is less than 70 miles, the coordinator must indicate that the protection criteria have been preserved or that the affected licensees have agreed in writing to the proposed system. Only co-channel interference between base station operations will be taken into consideration. Adjacent channel and other types of possible interference will not be taken into account.

* * * * *

FOOTNOTES

[1] Notice of Proposed Rule Making, PR Docket No. 87-1, 2 FCC Rcd 747 (1987).

[2] Comments were submitted by Motorola, Inc. (Motorola), the American SMR Network Association, Inc. (ASNA), DuCap Electronics, Inc. (DuCap), the National Association of Business and

Educational Radio, Inc. (NABER), and Ratelco, Inc. (Ratelco). Reply comments were submitted by the Special Industrial Radio Service Association, Inc. (SIRSA).

[3] *See* , *Notice* at 1 for a more thorough discussion on the derivation of the 70 mile separation requirement.

[4] *Notice* at page 2. The Commission has addressed the adequacy of the 70 mile separation requirement to protect against co-channel interference twice before. In the Los Angeles area, four mountains were identified as transmitter locations that would require a co-channel separation of 105 miles. *See* Memorandum Opinion and Order, Docket No. 18262, 51 FCC 2d 945 (1975). In northern California, a matrix system was adopted to prevent co-channel systems from locating on incompatible mountaintop locations. *See* Report and Order, PR Docket No. 82-593, 49 Fed. Reg. 17505 (1984).

[5] Seattle is in Region 5 of the US/Canada border area which is defined by the area between 121o 30§ W and 127o W within 140 kilometers of the border. *See* Section 90.619(b) of the Commission's Rules, 47 C.F.R. § 90.619(b).

[6] A licensee of an 800 MHz conventional system can receive exclusive use of its frequency in its service area if it loads at least 70 mobiles on that frequency. *See* Section 90.633 of the Commission's Rules, 47 C.F.R. § 90.633.

[7] The Commission recently allocated 10 MHz in the 900 MHz band to the private land mobile services other than public safety entities. *See* Report and Order in Gen. Docket Nos. 84-1231, 84-1233, and 84-1234, 61 RR 2d 165 (1986).

[8] 800 MHz private land mobile systems are governed by both Subpart M and Subpart S of Part 90 of the Commission's Rules. Briefly, Subpart M, 47 C.F.R §§ 90.301 - 90.390, provides 200 channels for any private land mobile user but requires the use of trunked technology. Subpart S provides frequencies for specific user groups and for systems locating near the Canadian and Mexican borders. Although Seattle itself is within the defined Canadian border area and, therefore, governed by Subpart S, suburban locations are outside of region 5 and, therefore, eligible to use both Subpart M and Subpart S frequencies. The Commission is currently considering a proposal to merge Subpart *See* Notice of Proposed Rule Making, PR Docket No. 86-404, 1 FCC Rcd 809 (1986); Erratum, 1 FCC Rcd 1225 (1986).

[9] *See* Sections 90.621(c) and 90.621(d) of the Commission's Rules, 47 C.F.R §§ 90.621(c) and 90.621(d), for non-SMR assignment criteria.

[10] This decision pertains particularly to assignments made under Subpart S. Because Subpart M only concerns trunked systems and does not recognize different service categories, the increased separation requirement would apply to both SMR and non-SMR systems licensed under this subpart. We believe that this is consistent with the other actions taken in this proceeding because all of Subpart M frequencies are assigned without using the services of the frequency coordinators.

[11] Applications for conventional SMR systems using the 150 channels in Subpart S reserved for conventional use are coordinated by the certified coordinator for the Business Radio Service.

CONCURRING STATEMENT OF COMMISSIONER JAMES H. QUELLO

Re: Co-channel Assignment Standards for 800 MHz Trunked SMR Systems in the Seattle area.

I am concurring with the majority in this decision based on the fact that the uniqueness of the Seattle area outweighs my fundamental concern of maximizing channel reuse. Admittedly, action taken in this proceeding will limit channel reuse, however, the impact on channel reuse is minimixed by identifying specific locations protected by the 105 mile separation requirment. The unique topographical features of the Seattle area warrant the decision made in this proceeding, and this decision should not be construed as the wide-scale dissolution of the Commission's efforts to facilitate channel reuse.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 85-204

In the Matter of

Implementation and Scope of
the International Settlements
Policy for Parallel
International Communications
Routes

FURTHER RECONSIDERATION

Adopted: March 3, 1988; Released: March 21, 1988

By the Commission:

I. INTRODUCTION

1. On January 30, 1986, we released a *Report and Order* reaffirming our longstanding policy that oversight of settlements arrangements between U.S. carriers and foreign administrations is necessary to increase the effectiveness of our pro-competitive policies and help ensure that U.S. users realize the benefits of these policies.[1] Among other things, the Report and Order extended the application of our international settlements policy (ISP) to enhanced services, although we stated that in the absence of demonstrable abuses we would not apply the procedural requirements of the policy to the providers of such services.[2]

2. The Association of Data Processing Services Organizations (ADAPSO) filed a petition for reconsideration of our decision to apply the ISP to enhanced services, arguing that this Commission does not have the authority to regulate enhanced services and that application of the ISP would obstruct the functioning of an otherwise competitive market for enhanced services. On February 19, 1987, we released an Order on Reconsideration in which, among other things, we denied ADAPSO's petition on reconsideration and reaffirmed our decision in the Report and Order to apply our international settlements policy (ISP) to the provision of international enhanced services. [3] Specifically, we reaffirmed our view that we have authority to apply the ISP to enhanced services and stated that the application of the ISP to enhanced services was neither burdensome nor harmful to competition.

3. On April 20, 1987, Aeronautical Radio, Inc., (ARINC), and the Air Transport Association of America (ATA) filed a joint petition seeking further reconsideration of our determination to apply the international settlements policy to enhanced services. This decision, petitioners argue, will undermine ongoing U.S. efforts, in a variety of international forums, most particularly the WATTC[4] to provide for the competitive provision of international enhanced services and preserve the unregulated status of international enhanced service providers. Three parties, ADAPSO, Citicorp, and International Business Machines (IBM), supported the ARINC/ATA petition. ITT World Communications Inc. (ITTWC), a common carrier that also provides some enhanced services, opposed the ARINC/ATA Petition. In this Order, we grant the ARINC/ATA petition for reconsideration and withdraw the application of the ISP to the provision of international enhanced service providers.

II. SUMMARY OF PLEADINGS

A. *Petition for Reconsideration.*

4. ARINC/ATA state that, while they have not previously taken a position on the application of the ISP to enhanced services, they have decided to seek reconsideration on this issue because recent events have made application of the policy to such services "counterproductive." They assert that the continued application of the ISP to enhanced services could have serious, negative implications for the U.S. negotiating position in the WATTC and other international forums where the United States is seeking to retain sufficient discretion in international telecommunications regulations to accommodate the U.S. preference for the unregulated provision of "enhanced services. In addition, ARINC/ATA state that, while they agree with those parties that argue that this Commission lacks the jurisdiction to apply the ISP to enhanced service providers, we need not resolve that question in this proceeding. Rather, they assert, we should simply withdraw the application of the ISP to international enhanced services, which would render moot the question of how far our jurisdiction over enhanced services extends.

B. *Comments in Support of the ARINC / ATA Petition.*

5. ADAPSO, Citicorp, and IBM support the ARINC/ATA petition and agree with ARINC/ATA that application of the ISP to enhanced services is likely to harm the U.S. negotiating position in WATTC. IBM notes that, in the preparatory meeting for the WATTC, participants considered a specific proposal to apply accounting rates to enhanced services and that, if such proposal were adopted, most U.S. enhanced service providers would experience increased costs for their international offerings. IBM argues that application of the ISP to international enhanced services could jeopardize U.S. efforts to oppose that proposal.

6. IBM also argues that there can be no whipsawing of unregulated enhanced services and, as a result, there is no need to apply the ISP to enhanced services. IBM notes that our *Computer II* and *Computer III* rules require basic services to be made available to all providers of enhanced services at the same rates those services are offered to end users. IBM argues that users and enhanced service providers are sufficiently protected by the application of the ISP to the basic services which underlie their enhanced services.

7. ADAPSO states that the purpose of the anti-whipsawing policy is to protect users of basic services from increases in carrier costs of providing those services and that this rationale is not applicable for enhanced service providers. ADAPSO also observes that there are typically no operating agreements for enhanced services (other than, perhaps, an agreement as to how a private line can be used) and therefore no accounting rates for the PTTs to use in whipsawing providers. Finally, ADAPSO

asserts that the extension of the ISP to most enhanced services is unlawful and that the Commission's jurisdiction over common carriers cannot be stretched to reach unregulated computer-service providers.

C. *ARINC / ATA Reply.*

8. ARINC/ATA note the support of the ADAPSO, Citicorp, and IBM for their petition and offer an update on events in the preparations for WATTC that occurred after the filing of their petition. They believe that this update underscores the need to reaffirm the unregulated nature of international enhanced services. Specifically, ARINC/ATA observe that at the April 1987, WATTC Preparatory Conference, the delegates adopted, over U.S. opposition, draft regulations for consideration at the 1988 WATTC that include substantial regulation of enhanced service and value-added-network (VANs) providers. ARINC/ATA argue that this decision makes it more important than ever that we reverse our decision to apply the ISP to such services.

D. *Reply of ITTWC.*

9. ITT World Communications Inc. (ITTWC) filed reply comments opposing the ARINC/ATA petition. ITTWC challenges the IBM argument that whipsawing cannot occur in enhanced services and argues that there is a continuing need for Commission oversight to protect U.S. interests. ITTWC argues that potential whipsawing of U.S. telex carriers provides a continuing need for Commission oversight of accounting rates and settlements for international enhanced services.[5]

E. *ARINC / ATA Supplemental Reply.*[6]

10. ARINC/ATA argue that the ITTWC comments do not refute their argument that the Commission should not, as a matter of policy, adopt unnecessary regulations that would undermine the U.S. position in international discussions. ARINC/ATA further argue that the example of whipsawing cited by ITTWC does not demonstrate a need for Commission regulation of enhanced services. ARINC/ATA characterize ITTWC's reply as an attempt to get the Commission to protect ITTWC's telex service from new technology. ARINC/ATA claim that ITTWC's claimed example of whipsawing is instead an example of an attempt at network modernization that would allow the PTT to offer users better service at lower charges. Finally, ARINC/ATA argue that the ITTWC reply does not address the public-policy benefits of a decision to reaffirm the unregulated nature of enhanced services.

III. DISCUSSION

11. In the Report and Order in this proceeding, we expressly extended the application of our international settlements policy to enhanced services. We did so based on our determination that the principles that form the basis of our international settlements policy apply to all international services and that all such services may be subject to the whipsawing practices of foreign PTTs. We determined, however, that although the threat of whipsawing was present with regard to enhanced services, on balance the public interest did not require subjecting international enhanced service providers to the ISP's procedural requirements.[7] In the Order on Reconsideration, we reaffirmed our determination that the possibility of whipsawing required that we continue to apply the ISP to enhanced service providers and extended our monitoring of the ISP to include any arrangement between a U.S. service provider and a foreign correspondent.[8]

12. Several considerations lead us to conclude that applying the ISP to enhanced services will not serve the public interest at this time. First, as the petitioners observe, fundamental objectives that the United States can seek in the WATTC, such as the continued availability of private line services and the provision of international enhanced services on a competitive, unregulated basis, might be compromised by misperceptions of our objectives in applying the ISP to enhanced service providers. Second, we believe that the Communications Act and our current rules, including the application of the ISP to voice and record common carrier services, coupled with our ability to engage PTTs in bilateral discussions if need be, provide us with sufficient authority and ability to address the whipsawing of U.S. international service providers. Third, our assertion that we will apply the ISP to enhanced service providers has had few practical consequences, since we have expressly declined to apply the procedural requirements of the policy and have not, in fact, invoked the policy against any enhanced service provider/PTT arrangement.[9] Thus, our decision not to apply the policy at this time will not change any current arrangements or requirements.[10] Fourth, if, contrary to the expectations of many of the major participants in the international enhanced services market, whipsawing of enhanced service providers by PTTs develops as a major problem, we can consider then whether applying the ISP to those providers would be an effective response to the problem.[11]

14. Accordingly, IT IS ORDERED that the Petition for Further Reconsideration filed by Aeronautical Radio, Inc., and the Air Transport Association of America is, to the extent provided for herein, GRANTED.

15. IT IS FURTHER ORDERED that the decisions in our Report and Order and Order on Reconsideration in this proceeding are modified to withdraw the extension of the application of the international settlements policy to enhanced services.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

FOOTNOTES

[1] *See* Implementation and Scope of Uniform Settlements Policy for Parallel International Communications Routes, CC Docket No. 85-204, 51 Fed. Reg. 4736 (February 7, 1986) (hereinafter *Report and Order).* The policy, often called the "uniform settlements policy," was first developed in the 1930's and had its roots in antitrust law. The policy evolved through Commission decisions, policy statements, and practice. *See , e. g.,* Mackay Radio and Telegraph Co., 25 FCC 690 (1951), *rev' d on other grounds sub nom.* RCA Communications, Inc. v. FCC, 201 F.2d 69486 (1953) [Mackay II]; TRT Telecommunications Corp., 46 FCC 2d 1042 (1984). Specifically, the policy was developed to respond to the ability and incentive of foreign Postal Telephone and Telegraph Administrations (PTTs), which have a monopoly over the

provision of telecommunications services in, to, and from their home markets, to obtain unduly favorable terms and conditions in their relationships with multiple U.S. carriers, to the detriment of U.S. carriers and ratepayers. The approach most commonly used by PTTs has been the manipulation of multiple U.S. carriers against one another in a process referred to as "whipsawing." Generally, this has involved a PTT seeking a modification of the accounting rate in a manner more favorable to the PTT -- that is, a reduction in the rate paid by the PTT to the U.S. carrier for delivery of traffic in the U.S. or an increase in the rate paid by U.S. carriers to the PTT for delivery of traffic in that foreign country. As a result, we have attempted to prevent whipsawing by requiring that all U.S. carriers offering similar service to the same foreign point do so under identical accounting rates, settlement rates, and divisions of tolls. This proceeding was initiated by a Notice of Proposed Rule Making in July, 1985. *See* Notice of Proposed Rule Making, CC Docket 85-204, FCC 85-332 (released July 3, 1985).

[2] Under the procedures established in the Report and Order, carriers are required to file with the Commission copies of their operating agreements with the PTTs. If the filed agreement for a particular point differs from those already in effect for that point, the filing carrier must seek a waiver of the ISP. The Report and Order also established a 60-day "semi-automatic grant process for acting on waiver petitions. Under this approach, the petition is put on public notice and interested persons have 21 days to file comments on oppositions, with 10 more days for replies. If, at the end of 60 days, the staff has not indicated a need for more information or formal action, the waiver is deemed to be granted. *See* Report and Order, *supra* note 1, at para. n. 28.

[3] *See* Order on Reconsideration, CC Docket 85-204, 2 FCC Record 1118 (1987).

[4] WATTC is an acronym standing for the World Administrative Telegraph and Telephone Conference that will be held in 1988. The WATTC is being convened to overhaul the existing Telephone and Telegraph Regulations of the Comite Consultatif International Telegraphique et Telephonique (CCITT).

[5] ITTWC attaches a letter from Swift Global Communications (which ITTWC characterizes as a U.S. "unregulated, enhanced carrier) to the Colombian PTT offering to install a computer and software that will allow the PTT to provide store and forward telex service. Under the proposed contract, Swift Global would provide the PTT transit traffic and, in return, the PTT would route U.S.-bound telex traffic via Swift Global and Swift Global would "refile" this traffic with U.S. telex carriers in the United States. The Swift Global proposal provided for an accounting rate for U.S.-bound service of2.00, divided 50/50, versus the existing Colombia/USA telex accounting rate of3.00, also split 50/50. ITTWC also attaches a telex from the Colombian PTT to U.S. telex carriers proposing a reduction in the telex accounting rate from3.00 to2.00 that it received subsequent to the Swift Global proposal that ITTWC asserts demonstrates the continued potential for whipsawing of U.S. telex carriers.

[6] ARINC/ATA accompanied its Supplemental Reply with a Motion pursuant to Sections 1.3 and 1.45 of our Rules and Regulations, 47 C.F.R. §§ 1.3 and 1.45 (1987), asking us to accept this additional pleading. ARINC/ATA note that the ITTWC comments, although denominated a "reply," raise issues bearing on the merits of the ARINC/ATA petition to which they have had no opportunity to reply. We believe that the ITTWC reply comments raise issues that are more properly addressed in comments in opposition to a petition for reconsideration. In order to obtain the broadest range of comment on the issue in this proceeding, however, we will accept both ITTWC's reply comments and ARINC/ATA's supplemental reply comments. Therefore, we grant ARINC/ATA's motion.

[7] *See* Report and Order, *supra* note 2.

[8] *See* Order on Reconsideration, *supra* note 3 at para. 33.

[9] While ITTWC argues that it has identified an example of whipsawing and the need for the application of the ISP to enhanced services, we do not believe that it is at all clear that the example it cites, which ITTWC characterizes as "store and forward" telex, even involves an enhanced service. To the contrary, it appears that the service ITTWC describes involves simple resale of a service that is classified as basic under our policies.

[10] Enhanced services that utilize the telecommunications network can be provided either through connection to the public switched networks or through use of a private leased circuit. In neither case is there a "settlement based on an operating agreement in the traditional sense-- *i. e.*, a contract that sets forth an accounting rate for the service, an agreed division of the accounting rate, or a settlement of the accounting rate into U.S. dollars. For use of the public switched networks, an enhanced service provider merely pays the public tariff or contract rate -- there is no division of tolls or settlement arrangements. Private lines are provided on an "end-on-end" basis -- with a U.S. carrier and its foreign correspondent each leasing their portions of the through service to the user separately, and each setting their own rate for its portion. The terms under which private lines are offered are set out in public tariffs in each country, rather than in a specific contract for each enhanced service provider. If there is a specific agreement between the PTT and an enhanced service providers concerning a private line, it is usually in the nature of a limitation on how, or for what services, the circuits may be used.

[11] At such a time, we would consider the arguments concerning our jurisdiction to apply the ISP to enhanced service provider arrangements with PTTs raised by ADAPSO. We agree with the petitioners, however, that in light of our decision to withdraw the application of the ISP to enhanced service providers, that jurisdictional question is moot for purposes of this proceeding.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MICRONESIAN TELECOMMUNICATIONS CORPORATION — File No. I-T-C-88-043

Application for Section 214 Authority to Acquire from Comsat Earth Stations, Inc. and Operate an International Earth Station at Susupe, Commonwealth of Northern Mariana Islands to Provide Earth Station Services

COMSAT EARTH STATIONS, INC. — File No. C-S-G-88-001-AL

Application for Consent to Assignment of Radio Station Construction Permit or License for an International Earth Station at Susupe, Commonwealth of Northern Mariana Islands to Micronesian Telecommunications Corporation

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: March 4, 1988; Released: March 18, 1988

By the Acting Chief, International Facilities Division:

I. INTRODUCTION

1. On December 1, 1987, Micronesian Telecommunications Corporation (MTC) filed an application, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. Section 214, and Sections 63.10 and 63.01 of the Commission's rules, 47 C.F.R. Sections 63.10, 63.01, to acquire from Comsat Earth Stations, Inc. (CES) and operate the international multi-purpose earth station at Susupe, Saipan, Commonwealth of Northern Mariana Islands. On October 6, 1987, CES filed an application for consent to assign to MTC the radio license for the Susupe earth station. The applications are unopposed. For the reasons stated below we grant the applications.

II. APPLICATIONS

2. In an order released June 10, 1980, the Common Carrier Bureau authorized Comsat[1] to construct and operate an international multi-purpose earth station in what at that time was the territory, and is now the Commonwealth, of the Northern Mariana Islands.[2] The instant applications seek the requisite Commission authority to allow MTC to become the owner and operator of this existing station. The MTC application states that MTC will use the Susupe facilities to provide uplink and downlink satellite communications services between the Commonwealth of the Northern Mariana Islands and points reached by INTELSAT Pacific Ocean Region satellite, specifically Korea, Japan, the Philippines, Palau, the Marshall Islands, Hawaii and the continental United States. It further states that MTC will offer the services under tariff and will make service available on a non-discriminatory basis. MTC advises that it is a common carrier subject to Section 214 of the Communications Act, as amended, 47 U.S.C. Section 214. [3]

3. MTC and CES both attach to their respective applications the April 1987 Memorandum of Agreement between the applicants. The agreement calls for MTC to purchase the Susupe facilities at net book cost, which the parties estimate will be approximately0.8 million. CES' application advises that the Rural Electrification Administration (REA) has released REA loan funds in the amount of2,990,800 for MTC's purchase of the Susupe earth station.

4. MTC asserts that continued operation of the Susupe earth station is in the public interest because it will provide high quality direct satellite communications circuits to the Commonwealth of the Northern Mariana Islands. To ensure the continuity and quality of service provided through the station, MTC agrees, in the Memorandum of Agreement, to offer employment to the existing earth station personnel and CES agrees to assist MTC with the planning and training necessary for future operations.

III. DISCUSSION

5. We find that MTC's acquisition and operation of the Susupe multi-purpose earth station are in the public interest. MTC is a common carrier qualified to assume ownership and operation of these facilities. Comsat, which through its various subsidiaries has owned and operated the facilities since their authorization in 1980, has made a business decision to divest itself of its multi-purpose earth station interests.[4] MTC's purchase of the Susupe earth station will allow Comsat to implement in part its business decision while ensuring the continuity of service provided through the station to the U.S. citizens domiciled in the Commonwealth of the Northern Mariana Islands. MTC will offer the earth station services under tariff and will make service available on a non-discriminatory basis.[5] Furthermore, the transfer will be made at net book cost.

IV. CONCLUSION/ORDERING CLAUSES

6. In conclusion, we find that the proposed arrangements meet the relevant statutory requirements.

7. Accordingly, IT IS CERTIFIED that the public interest, convenience and necessity require that Micronesian Telecommunications Corporation acquire the interests of Comsat Earth Stations, Inc. in the Susupe, Saipan earth station.

8. IT IS FURTHER ORDERED that the application of MTC, File No. I-T-C-88-043, IS GRANTED, and MTC is authorized to acquire and operate the interests of CES in the Susupe international earth station and to offer earth station services under tariff to authorized users.

9. IT IS FURTHER ORDERED that the application of CES, File No. CSG-88-001-AL, IS GRANTED, and the applicant is authorized to assign its radio station licenses or permits for the Susupe international earth station to MTC.

10. The Commission retains jurisdiction over this matter to ensure that all present and future authorized carriers have nondiscriminatory use of, and equitable access to, the communications satellite system and earth stations.

11. This order is issued under Section 0.291 of the Commission's Rules and Regulations, 47 C.F.R. Section 0.291 (1985), and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] Communications Satellite Corporation, File No. 484-CSG-P-80, Mimeo No. 32379 (released June 10, 1980). In September 1985, we approved the assignment of the license for this station from Comsat Satellite Corporation (Comsat) to its subsidiary CICI. *See* File No. CSG-85-038-AL. Subsequently, in an order released November 16, 1987, the Common Carrier Bureau approved CICI's application for consent to assign the authorizations for certain multi-purpose earth stations, including the Susupe facility, to Comsat's newly formed subsidiary CES. Communications Satellite Corp., 2 FCC Rcd 7202 (1987).

[2] On November 4, 1986, the Commonwealth of the Northern Mariana Islands in political union with the United States was fully established. *See* Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, as approved by Congress in Public Law 94-241 (March 24, 1976), 90 Stat. 263. *Also see* Presidential Proclamation 5564, 51 Fed. Reg. 40399 (November 7, 1986).

[3] The CES Title III application also advises that MTC is a subsidiary of Hawaiian Telephone Company (HTC) which owns 87.5 percent of MTC's stock. HTC in turn is a subsidiary of GTE Corporation. *See* CES Application, File No. CSG-88-001-AL (filed October 6, 1987).

[4] *See* Communications Satellite Corporation, 2 FCC Rcd 7202, 7206 n. 2.

[5] We find that, under the Commission's international competitive carrier policies, MTC is dominant in its provision of international multi-purpose earth station services in the Northern Marianas. MTC has provided no specific information respecting the issue of non-dominance. Moreover, MTC, as the sole provider of international multi-purpose earth station services for the Commonwealth of the Northern Marianas, does not face effective competition in its market. In its International Competitive Carrier decision, the Commission classified as dominant U.S. carriers providing IMTS for non-contiguous points because these carriers currently do not face competition in their markets, and found Comsat dominant in its provision of multi-purpose earth station services. It required any application to initiate multi-purpose earth station services to include adequate information for the Commission to make a finding as to the issue of non-dominance. International Competitive Carrier Policies, 102 F.C.C. 2d 812, 832, 839, 844-45 (1985) *recon. denied* FCC 86-339 (released August 7, 1986).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CENTRAL CORPORATION — File No. I-T-C-88-061

Application for authority to operate as an international resale carrier

GRACE COMMUNICATIONS, INC. — File No. I-T-C-88-063

Application for authority to operate as an international resale carrier

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: March 9, 1988 **Released: March 18, 1988**

By the Acting Chief, International Facilities Division:

1. The Commission is considering two applications, filed on January 4 and 11, 1988, respectively, by Central Corporation (Central) and Grace Communications, Inc. (Grace), requesting authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing carriers to provide international switched voice service between the U.S. and various overseas points. The applications were placed on public notice on January 20, 1988. No comments were received.

2. Upon review of the applications, we find that the applicants have the legal, technical and financial qualifications to provide the proposed services. Central and Grace are already providing domestic resale service. They now propose to resell international switched voice services in competition with other carriers already providing resale of such services. In recent authorizations of new entrants, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future convenience and necessity require the provision of international switched voice services to the general public by Central and Grace.

4. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-88-061 and I-T-C-88-063 ARE GRANTED; and

a. Central is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs FCC Nos. 1 and 2, between the contiguous U.S., Hawaii, Puerto Rico and the Virgin Islands, on the one hand, and those points now or hereafter listed in those tariffs, on the other hand; and

b. Grace is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs FCC No. 1, between the United States, and those points now or hereafter listed in that AT&T's tariff.

5. Copies of any operating agreements entered into between Central and Grace and their correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that Central and Grace shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. This order is issued under Section 0.291 of the Commission's rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n. 2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: March 11, 1988

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON NECA'S PETITION FOR APPROVAL OF AVERAGE SCHEDULE SUPPLEMENTAL DISBURSEMENT

On February 17, 1988, the National Exchange Carriers Association, Inc. (NECA) filed a petition that seeks approval of a one-time disbursement to reimburse average schedule companies for costs that are being incurred in converting to the recently adopted Part 32 accounting rules. NECA states that the burden that is imposed upon small average schedule companies to conform to the new Part 32 rules is substantial and that the existing average schedules do not reimbuse average schedule companies for the one-time expenses that are associated with converting to Part 32.[1]

NECA believes that it is in the public interest to encourage average schedule companies to convert promptly to Part 32 accounting. Also, prompt conformance with Part 32 will enable NECA to acquire accurate data from average schedule companies for formula updates.

In cooperation with the Industry Average Schedule Task Group (Task Group), NECA developed a supplemental methodology that recognized five categories of costs that would be associated with conformance: software purchase; software installation; training; salary; and other costs associated with redesigning forms, reports and services of outside accounting firms. These costs would vary from company to company, depending on the size of the company, the types of computer equipment used, and whether a company performs its own accounting or hires outside accounting professionals.

The Task Group estimated that the minimum total company fixed costs would be approximately20,000. NECA proposes that each average schedule company receive5,000, assuming a 25% interstate allocation of those fixed costs. To recognize the range of additional costs for both large and small companies, NECA proposes a variable amount that is a decreasing function of the number of access lines. To qualify for the supplemental disbursement that is contained in this proposal, an average schedule company would be required to certify to NECA that it has implemented Part 32 Class accounting and that it intends to maintain such accounts. The disbursement must be claimed in 1988 or 1989 and will only be available to companies that received settlements based upon average schedules in those years.

Interested parties should file comments on this request with the Secretary, FCC 1919 M Street, N.W., Washington, D.C. 20554, by *March 28, 1988*, and reply comments by *April 7, 1988*, . Two copies should also be sent to Peggy Reitzel, Policy and Program Planning Division, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public records duplication: International Transcription Services, Inc. (ITS), Suite 140, 2100 M Street, N.W., Washington, D.C. 20037. Copies of NECA's Petition may be obtained from ITS at (202) 857-3800, or by contacting Grace Williams, Room 544, FCC, 1919 M Street, N.W., Washington, D.C. 20554.

For further information, contact Kent Nilsson or Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-4047.

FEDERAL COMMUNICATIONS COMMISSION

FOOTNOTE

[1] NECA stated that the actual expenses of cost conversion cannot be known with certainty until after the average schedule companies have fully completed the implementation process. NECA's request was thus directed to providing sufficient funds to permit this process to proceed expeditiously. NECA noted that in the absence of the requested supplemental reimbursement, average schedule companies would be incurring Part 32 conversion costs without receiving reimbursementof those costs.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Bell Atlantic
Telephone Companies
Transmittal Nos. 224 and 226

Revisions to Tariff F.C.C. No. 1

MEMORANDUM OPINION AND ORDER

Adopted: March 7, 1988; Released: March 8, 1988

By the Deputy Chief, Common Carrier Bureau:

I. BACKGROUND

1. By the referenced transmittals the Bell Atlantic Telephone Companies (Bell Atlantic) have proposed revisions to their tariff for Access Services to establish rates and charges for Special Access Individual Case Basis (ICB) High Capacity DS3 offerings.[1] The transmittals are presently scheduled to become effective on March 9, 1988. Local Area Telecommunications, Inc. (Locate) has filed petitions to reject or suspend both transmittals, arguing that the proposed ICB rates are unlawfully discriminatory and that the filings do not comply with Section 61.38 of the Commission's Rules, 47 C.F.R. § 61.38. Bell Atlantic has filed replies to Locate's petitions.

2. In response to a Bureau request,[2] on February 8, 1988 Bell Atlantic filed further information concerning the basis of ratemaking for its ICB services. The *January 29 Letter* posed seven questions requesting information, *inter alia*, regarding how Bell Atlantic calculated total investment and expense for its ICB offerings, how Bell Atlantic developed rates for its ICB offerings, and why Bell Atlantic had not proposed to offer DS3 services pursuant to a non-discriminatory averaged schedule of rates. We also asked Bell Atlantic to indicate what non-cost factors it considered in developing its rates and what effect the proposed services would have on other Bell Atlantic services. Based on the record before us, and for the reasons set forth below, we find the captioned transmittals to be unreasonably discriminatory. We therefore reject them as patently unlawful and direct Bell Atlantic to remove the rejected material from its tariff.

II. PLEADINGS

A. Petitions To Reject

3. Locate argues that the rate elements for the proposed ICB services are the same as two existing rate elements for other Special Access services, namely Channel Terminations and Multiplexing. Locate Petition To Reject or Suspend Tr. No. 224 at 1-2. [3] Locate maintains that the rate elements proposed by Bell Atlantic are unlawfully discriminatory because Bell Atlantic has not demonstrated that they are so unique that rates cannot be developed which are applicable to all ratepayers. *Id.* at 2. Indeed, Locate argues that Bell Atlantic's cost support information consists of conclusory statements that the ICB approach is justified because the customers' needs cannot be met through existing tariffed services. *Id.* at 3. Locate concludes that, although ICBs may be justified in some cases, Bell Atlantic has not demonstrated that the costs of the facilities in question cannot be averaged and that Bell Atlantic therefore must develop rate elements of general applicability for DS3 Special Access Service. *Id.* at 5.

4. Locate also argues that the filings violate Section 61.38 of the Commission's Rules, 47 C.F.R. § 61.38. Locate asserts that Bell Atlantic has failed to include a past year cost of service study and estimates of the effect of the proposed revisions on the traffic and revenues from the carrier's various other services. In addition, Locate states, Bell Atlantic must provide work papers and statistical data which comply with Section 1.363 of the Commission's Rules, 47 C.F.R. § 1.363. *Id.* at 5-6. Finally, Locate contends that the proposed ICB arrangements are unlawful because they would allow Bell Atlantic to circumvent the full tariff regulation to which dominant carriers are subject. *Id.* at 6-7.

B. Replies

5. Bell Atlantic replies that Locate raised the same arguments in its petition against the local exchange carriers' (LECs) annual 1988 access tariff filings that it now presents in opposition to the referenced filings. Bell Atlantic notes that we permitted the tariffs to become effective and contends that Locate offers no new information. Bell Atlantic Reply to Petition To Reject or Suspend Tr. No. 224 at 2.[4]

6. Bell Atlantic also maintains that Locate ignores the technological and marketplace conditions which make ICB pricing of DS3 services appropriate. Specifically, Bell Atlantic asserts that DS3 services are designed and engineered individually to meet customer needs and the costs thus vary from customer to customer. In addition, Bell Atlantic states that DS3 services are used by only the most sophisticated customers who have many bypass alternatives available to them. Bell Atlantic concludes that because the DS3 marketplace is already competitive, "imposition of strenuous tariff regulation, as suggested by Locate, is unnecessary and inappropriate." *Id.* at 4. Bell Atlantic also disputes Locate's assertion that its tariff is discriminatory because its ICB rates for DS3 service include Channel Terminations and Multiplexing rate elements which are common to other services. Bell Atlantic states that because the costs for these services vary from customer to customer, it is appropriate that ICB rates should apply.[5]

7. Bell Atlantic also argues that its cost support is sufficient. Bell Atlantic states that it provided 75 pages of cost support information which presented prospective cost and revenue data for each DS3 service and explained the derivation of the rates. Bell Atlantic concludes that this information is sufficient to justify services with total annual revenues of 40,000. *Id.* Finally, Bell Atlantic speculates that Locate filed its petition because it seeks to inhibit Bell Atlantic's ability to offer competitive cost-based DS3 rates which reflect individual customer needs. It contends that any such limitation would not serve the public interest. *Id.* at 6.

C. Response to Information Request

8. Bell Atlantic provided individual responses to each of the questions posed in the *January 29 Letter*. The salient points of Bell Atlantic's responses to these questions are summarized below. First, Bell Atlantic argues that it is offering DS3 services under a non-discriminatory schedule of rates in compliance with Sections 201-203 of the Communications Act, 47 U.S.C. §§ 201-203. According to Bell Atlantic,

> [e]ach individual case basis rate is developed with specific reference to the actual cost of that service, the competitive alternatives to that service, and the effect of the service on Bell Atlantic's other offerings. Such rates are not unlawfully discriminatory, but rather are disaggregated rates that appropriately recognize the unique cost and competitive circumstances in each situation.

Bell Atlantic Response to Question 1 at 1 (citation omitted). In addition, it argues that the market for DS3 service is highly competitive and that bypass is an attractive option for potential customers for this service. Bell Atlantic concludes that competition makes it necessary to price DS3 services individually. Bell Atlantic Response to Question 3 at 1-2.

9. Bell Atlantic states that it considered "a number of non-cost factors, although rates were always set to recover no less than the direct incremental capital and expense costs of a particular installation." Bell Atlantic Response to Question 6 at 1. Among the non-cost factors considered by Bell Atlantic are service duration, competitive alternatives, impact on other services, and impact on ratepayers if bypass should occur. Bell Atlantic also states that it believes that competitive alternatives are feasible for all of the DS3 services contained in the captioned transmittals. Bell Atlantic declines to divulge its bidding strategy for each individual application.

10. Bell Atlantic states that the first step in the calculation of the capital costs and expenses for these DS3 services is to determine the direct capital costs associated with the initial investment and subsequent operating expenses associated with the proposed service. Bell Atlantic indicates that these costs include engineering the circuit, installing the fiber and associated electronics, splicing the fiber, and testing the circuit. Bell Atlantic Response to Question 5 at 1. Bell Atlantic does not indicate what, if any, rate of return it utilized in developing its proposed monthly charges. With regard to non-recurring charges (NRCs), Bell Atlantic states that its operating companies have different policies concerning the inclusion of a contribution in NRCs, although "when installation charges are included in the NRC the companies routinely include a contribution above direct costs." Bell Atlantic Response to Question 4 at 1. Bell Atlantic also states that the NRCs for DS3 service are higher than for other high capacity and wideband services because DS3 service requires special analysis. On an equivalent channel basis, however, Bell Atlantic states that NRCs for DS3 are lower than for other services. Finally, Bell Atlantic states that the impact of DS3 service on its other services depends upon the use made of the DS3 service, noting that some applications have a significant impact upon demand for other services while other applications do not. Bell Atlantic Response to Question 7 at 1.

III. DISCUSSION

11. Based on the record before us, and our analysis of the captioned filings, we conclude that the rates proposed by Bell Atlantic are unreasonably discriminatory. In addition, we agree with Locate's contention that the cost support material filed with these transmittals is deficient. The captioned transmittals must therefore be rejected as unlawful.[6] Bell Atlantic has not been able to indicate that there is any reasonable basis on which it set its proposed ICB rates and the record does not suggest that there is any lawful justification for what can only be described as striking disparities between the ICB rates it charges different customers.

12. We are concerned that the continued use of ICB rates for DS3 service may no longer be justified. The Commission's initial decision to allow ICB rates was conditioned on the eventual development of rate schedules and elimination of ICB rates.[7] The Commission permitted the use of ICB rates for certain services that telephone companies had not previously offered. The Commission cautioned, however, that it expected rates and regulations for such services to be set out in the relevant tariffs as they were developed. We believe that it may be appropriate for Bell Atlantic and other LECs to develop and file generally applicable rates for DS3 service because it may now be reasonable to view DS3 service as sufficiently widespread to warrant its treatment as a general offering. Continued use of ICB rates for DS3 service must be supported by a more compelling justification than Bell Atlantic has provided in this case. In addition, we intend to scrutinize carefully the materials supporting any future ICB filings to determine whether the proposed rates -- or other tariff terms --are unreasonably discriminatory.

13. Our analysis of the reasonableness of the captioned filing begins with a comparison of the proposed rates for DS3 service with Bell Atlantic's tariffed rates for DS1 service, the closest substitute among Bell Atlantic's tariffed offerings. Certainly, we do not believe that it is unreasonable for Bell Atlantic to offer DS3 customers a significant volume discount from the rates that they would pay for equivalent DS1 capacity. Nevertheless, we would expect either to see some consistency in the DS3 rates that Bell Atlantic charges different customers or sufficient cost justification to support its proposed ICB rates.

14. Neither is present in this filing. For example, Bell Atlantic proposes to provide US Sprint Communications Company (US Sprint) with two DS3 circuits for a total monthly recurring charge of 3964, or 15 percent of the charge for the equivalent DS1 capacity.[8] In the same filing, Bell Atlantic proposes to provide AT&T Communications, Inc. (AT&T) fiber in the equivalent of two DS3 circuits for23,880, or 53 percent of the tariffed charges for the equivalent DS1 capacity.[9] In another case, Bell Atlantic proposes to charge US Sprint7890 in total monthly recurring charges for one DS3 circuit, or 58 percent of the tariffed charges for the equivalent DS1 capacity.[10] Finally, Bell Atlantic proposes to charge the law firm of Arnold and Porter total monthly recurring charges of 3841 for one DS3 circuit, or 28 percent of the tariffed rate for the equivalent DS1 capacity.[11] The proposed NRCs also vary widely from case to case without explanation. Bell Atlantic has failed to offer any reasonable explanation for the need for such wide variations in its proposed ICB rates.

15. In addition, we find that neither the cost support material filed with the captioned transmittals, nor Bell Atlantic's responses to the *January 29 Letter*, adequately

describes Bell Atlantic's ratemaking methodology. Much of Bell Atlantic's discussion focuses on its need to respond to the offerings of competitive service providers. Although it is not our objective to limit Bell Atlantic's ability to compete with other vendors, we cannot sanction blatant discrimination among its customers based on Bell Atlantic's perception of what the traffic will bear.

IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED that the captioned tariff revisions filed by the Bell Atlantic Telephone Companies ARE REJECTED.

17. Bell Atlantic is directed to file revisions to its tariff to remove the rejected material not later than **March 15, 1988** to be effective on not less than one day's notice. For purposes of this filing we waive Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59 and assign Special Permission No. 88-116.

FEDERAL COMMUNICATIONS COMMISSION

Carl D. Lawson
Deputy Chief,
Common Carrier Bureau

FOOTNOTES

[1] These transmittals also delete rates and charges for Specialized Facilities. Bell Atlantic Tr. No. 224, Letter of Transmittal at 1; Bell Atlantic Tr. No. 226, Letter of Transmittal at 1.

[2] Letter to D.E. Berry, Vice President, Bell Atlantic Network Services, Inc., from Chief, Tariff Division, Common Carrier Bureau, dated Jan. 29, 1988 (*January 29 Letter*).

[3] Locate makes the same arguments in its petition against Tr. No. 226 as in its petition against Tr. No. 224 and has included the latter as an attachment to the former. Accordingly, we will limit our discussion to Locate's first petition.

[4] Bell Atlantic incorporates by reference its reply to Locate's petition against Tr. No. 224 in its reply to Locate's petition against Tr. No. 226. We will therefore limit our discussion to Bell Atlantic's first reply.

[5] Bell Atlantic also observes that its tariff "specifically indicates that the rates for DS3 Channel Terminations and DS3 multiplexing are set on an Individual Case Basis, and thus it is entirely proper for the tariff to include such rates." *Id.* at 5. Bell Atlantic does not explain how this is relevant to the lawfulness of the proposed rates.

[6] Either the unreasonable discrimination inherent in Bell Atlantic's rates or Bell Atlantic's failure to comply with Section 61.38 of the Commission's Rules would provide a sufficient basis for rejection of the proposed tariff revisions as patently unlawful.

[7] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 97 FCC 2d 1082, 1143 (1984).

[8] Bell Atlantic Tr. No. 224, Section 7.6, Proposed 2nd Revised Page 533.14 (Ref. No. 975). We have calculated the charges for equivalent DS1 capacity by multiplying the tariffed charges for channel mileage, if any, and channel terminations by 28, the number of DS1 channels on a DS3 circuit.

[9] Bell Atlantic Tr. No. 224, Section 12.3, Proposed Original Page 821.20. Information obtained informally by the staff of the Tariff Division indicates that US Sprint would pay no mileage charge for DS1 service as the two points of termination are in the same wire center. The service provided to AT&T, on the other hand, would incur channel mileage for eight miles. We have no reason to believe that this difference accounts for the disparate rates, however, as channel mileage is a relatively small portion of Bell Atlantic's charges for DS1 service.

[10] Bell Atlantic Tr. No. 224, Section 7.6, Proposed 1st Revised Page 533.30 (Ref. No. 865A).

[11] Bell Atlantic Tr. No. 224, Section 7.6, Proposed 3rd Revised Page 533.3 (Ref. No. 1034).

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER

Released: March 18, 1988

Mr. R.L. Dohr
Administrator-Study Analysis
Texas Exchange Carrier Association
P.O. Box 50907
One Bell Plaza, 31st Floor
Dallas, Texas 75720

Dear Mr. Dohr:

This is in reply to your letter of September 29, 1987, in which you requested an interpretation of the Separations Manual which was codified in Part 67 of the Commission's rules prior to January 1, 1988, and is now codified in Part 36. Specifically, you requested an interpretation of the rules for the jurisdictional separation of the embedded private line station apparatus.

You asked whether Section 67.153(b) required carriers to exclude Category 2 Station Equipment, Private Line Services, from the sixty-month phase-down of Customer Premise Equipment (CPE). You also asked whether, after the CPE phase-down is complete, Section 36.142(b) requires carriers to assign embedded private line services station equipment (purchased prior to December 31, 1982) to Category 2 Station Equipment and allocate it wholly to the state jurisdiction.

Section 67.153(b) required the exclusion of Category 2 Station Equipment from the sixty-month phase-down of CPE. All other categories of CPE were phased- out over a period of five years beginning January 1, 1983, to avoid any sudden shift in revenue requirements to the state jurisdiction that could result from the detariffing of CPE. At that time, however, Section 67.153(b) required the exclusion of Category 2 Station Equipment, Private Line Services, from the phase-out and allocated the costs of such equipment between the jurisdictions on the basis of direct assignment.

On January 1, 1988, Part 67 was replaced by Part 36 of the Commission's rules which includes Station Equipment as Information Origination/Termination (IOT) Equipment. Beginning January 1, 1988, Section 36.142(b) requires the assignment of embedded private line station equipment (purchased prior to December 31, 1982) to Category 2 IOT, Customer Premise Equipment, and the assignment of such investment wholly to the state jurisdiction. In its Recommended Decision and Order, *Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal - State Joint Board*, CC Docket No. 86-297, FCC 87J-4, released April 8, 1987, 2 FCC Rcd 2582, 2590 (1987), at para. 66, the Joint Board stated that although most equipment described as CPE for purposes of the Commission's Computer II decision will be deregulated Mr. R.L. Dohr 2. by January 1, 1988, and, therefore, will not be subject to jurisdictional separations, a few carriers will still provide tariffed CPE after January 1, 1988. The Joint Board further stated this CPE should be assigned to the state jurisdiction to reflect the phase-out of all CPE from the interstate rate base by 1988. The Commission adopted the recommendations of the Joint Board in its Report and Order, *MTS* and WATS Market Structure, Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishmentof a Federal- State Joint Board, CC Docket Nos. 78-72, 80-286 and 86-297, FCC 87-134, released May 1, 1987, 2 FCC Rcd 2639 (1987). Your interpretation is correct that embedded private line station equipment (purchased prior to December 31, 1982) should be assigned to Category 2 IOT, Customer Premise Equipment, and should be assigned wholly to the state jurisdiction.

We hope this explanation clarifies the separations procedures in question. If you have any questions concerning this response, please contact Patricia Shipley of my staff at (202) 632-7500.

Sincerely,

Kenneth P. Moran
Chief, Accounting and Audits Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCCAW SPACE TECHNOLOGIES, INC. File No. CSS-86-003-LA

Request for One-Year Extension of Time to Demonstrate Permanent Financial Qualifications to Construct and Operate A Private International Satellite System.

MEMORANDUM OPINION AND ORDER

Adopted: March 10, 1988; Released: March 18, 1988

By the Chief, Common Carrier Bureau:

1. The Commission has under consideration the request of McCaw Space Technologies, Inc. (McCaw) for a one-year of extension of the deadline for meeting the final phase of the Commission's Separate System financial requirements. McCaw holds a conditional authorization to provide a variety of international video and data services via its Celestar system.[1] No comments were filed.

2. In support of its request for a one-year extension, McCaw states that it has engaged in discussions with business and government reprepresenatives in at least twelve countries and is pursuing all realistic leads. It claims that a number of these representatives have expressed interest in using the Celestar system once it is operational. McCaw explains that despite these diligent efforts, it has been not able to secure any operating agreements. It remains confident, however, that some agreements will be forthcoming. In conjuction with these activities, McCaw states it has been developing a customer base for its services. It believes that these efforts, combined with resources it has committed, show that it has taken all reasonable steps toward the implementation of its system.

DISCUSSION

3. In 1985, the Commission determined that the public interest would be served by the authorization, under certain conditions, of international telecommunication satellite systems separate from INTELSAT.[2] Recognizing the unique institutional and commercial obstacles facing separate systems, the Commission adopted a two-part financial qualifications test. At the application stage, applicants are required to provide an estimate of start-up costs, costs of construction, launch and operation of their systems for a period of one-year, and potential or actual sources of funding.[3] The Commission stated it would grant a conditional construction permit upon such a showing, allowing applicants to defer until later a demonstration that it has sufficient non-contingent funds available to meet the cost of construction and launch and operating expenses for one year after launch. The Commission required applicants to file this demonstration no later than 60 days after the date the Commission received notification from the Department of State that, with regard to a particular separate systems applicant, the United States has fulfilled its obligations under Article XIV(d) of the INTELSAT Agreement.[4] On reconsideration, the Commission affirmed the two-part financial qualifications test, but imposed on all conditional authorizations a one-year limit for meeting the second stage financial showing.[5] The Commission noted, however, that applicants might extend their authorizations beyond the one-year limit through a good faith showing of diligence in seeking to establish their proposed systems.

4. Upon review of McCaw's request and Commission policy on the establishment of separate systems, we conclude that grant of a one-year extension is in the public interest. We recognize the difficulties McCaw faces in promoting its proposed system, especially when many uncertainties still exist.[6] McCaw has demonstrated to our satisfaction that it is making all reasonable efforts to establish its system. We have granted similar extensions of time to other separate system applicants based on the same showing.[7]

5. Accordingly, IT IS ORDERED that the request for a one-year extension of time filed January 15, 1988 by McCaw Space Technologies, Inc. to demonstrate permanent financial qualifications IS GRANTED and McCaw must file within one-year from the release date of this order all information necessary to meet the Commission's full financial requirements for the operation of its international satellite system.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] The Celestar system will consist of two in-orbit 11-12/14 GHz satellites located at 170' east longitude and 70' east longitude. McCaw plans to serve the United States, Canada, New Zealand, Australia, Japan, the Peoples' Republic of China, India, the Philippines, Taiwan, Indonesia, Hong Kong, Malaysia, Guam, southern Africa, the Middle East and some European countries. *See* McCaw Space Technologies, 2 FCC Rcd. 259 (1987).

[2] Establishment of Satellite Systems Providing International Communications, 101 FCC 2d 1046 (1985).

[3] *Id.* at 1165.

[4] *Id.* at 1165-1166.

[5] Establishment of Satellite Systems Providing International Communications, FCC 86-144 (released April 17, 1986) (Separate Systems Reconsideration).

[6] Before it may initiate service, McCaw must complete the INTELSAT Article XIV(d) consultation process so that INTELSAT can determine whether the proposed use of the system will cause either technical or significant economic harm to the global system.

[7] *See* International Satellite Inc., 2 FCC Rcd 4209 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

COASTAL EXPRESS COMMUNICATIONS, INC. File No. 24346-CD-P/L-1-86

For Permit and License in the Public Mobile Radio Service for One-Way Facilities to Operate on 35.60 MHz at Mobile, Alabama

MEMORANDUM OPINION AND ORDER

Adopted: March 11, 1987; Released: March 18, 1988

By the Chief, Mobile Services Division:

1. On June 24, 1986, Coastal Express Communications, Inc. (Coastal) filed an application for authorization to construct a new one-way station in the 35.60 MHz band in Mobile, Alabama. American Mobilphone Paging, Inc. (AMP) has filed a Petition to Deny or Designate for Hearing the Coastal application.[1] Coastal has filed an Opposition. American Mobilephone, Inc. (American) has filed Comments in Response to Petition to Deny. AMP has filed a Reply. Coastal has filed a Motion to Strike or, Alternatively, a Supplement to Opposition to Petition to Deny.

BACKGROUND

2. Coastal filed the captioned application on June 24, 1986 and in it disclosed that it was wholly-owned by Michael D. Bowman (Bowman); that Bowman was Coastal's sole principal; and that Bowman was the Executive Vice President and a key employee of American.[2] Coastal also disclosed all its Part 22 ownership interests. Those interests consisted solely of American's minority 40% interest in AMP, the petitioner.

ARGUMENTS

3. In its Petition to Deny, AMP argues that Coastal is not the real party in interest behind its application, but rather is a "front" for American. AMP alleges that American had a motive to deceive the Commission because American was barred from filing PLMS applications in its own name by a covenant not to compete that it had entered into with AMP. [3] AMP also claims that there exist other indices of American's control over the Coastal application including the facts that Coastal's engineering was prepared by another American employee, Steve Cannon (Cannon); Coastal's mailing address and telephone number are the same as American's; a related application for two-way facilities shows American as the applicant; and Coastal's 35.60 MHz application is part of a pattern of 35.60 MHz applications by American.

4. In its Opposition, Coastal argues first that it fully complied with the disclosure requirements of Section 22.13(a)(l) of the Rules, by disclosing that Bowman was Coastal's sole principal; that Bowman was Vice President of American and that American had a 40% interest in AMP. Coastal further states that Michael Bowman is the real party in interest behind the Coastal application[4]; Bowman provided all funding for Coastal out of his personal assets; the engineering for Coastal was kept separate from that done for American[5]; there was no pattern of filing only 35.60 MHz applications; and American maintains no control over Coastal. Next, Coastal argues that American lacks a motive to deceive because nothing in the Commission' Rules would preclude American from filing PLMS applications in Mobile, Alabama in its own name if it chose to do so. It notes that AMP does not have a facility on the 35.60 MHz frequency in Mobile, Alabama and therefore American is not proposing an additional channel for which a loading study is required by Section 22.16 of the Rules Further, Coastal argues that American lacks a motive to deceive because it is under no contractual disability that would preclude it from filing PLMS applications for Mobile, Alabama if it chose to do so. Coastal admits that American did enter into an agreement with AMP whereby American agreed not to establish its own paging or two-way operations in Mobile in return for American's 40% interest in AMP. However, Coastal notes that American had been advised by its counsel that the no-compete agreement was most likely unenforceable under Alabama law, but that in any event, the agreement's waiver clause would bar enforcement of the no-compete agreement after closing of a sale of stock, and that American could only violate the no-compete agreement by commencing service to the public and not by simply applying for licences.[6] Thus, Coastal argues that American was assured that it could file applications in Mobile in its own name and therefore, American lacked a motive to deceive the Commission. Coastal further notes that American decided in a May 30, 1986 meeting not to enter the Mobile/northern Gulf Coast markets and that such decision precipitated Bowman's decision to file the Coastal application. Finally, Coastal notes that American had a pre-existing corporate policy of permitting employees to pursue outside business interests, including owning separate PLMS businesses in geographic areas not served by American.[7]

5. American argues in its Comments that Coastal's filing was made by Bowman in his private capacity, without any involvement of American, financial or otherwise.[8]

6. In its Reply, AMP additionally argues that American deceived the Commission because it stated in its Opposition that American had no desire to enter the Mobile, Alabama market, when in fact American entered the Mobile, Alabama market as of September 15, 1986. Finally, AMP suggests that American was under a legal disability due to a second contractual no-compete clause which was not waived when Dittman exercised the put/call election.

7. Coastal's Motion to Strike or Supplement to Opposition to Petition to Deny argues that AMP has raised two new allegations that were not raised in the Petition to Deny, which are therefore untimely and should be dismissed. Alternatively, Coastal explains that American's May 30, 1986 decision not to enter the Mobile market was not intended to preclude American from entering the Mobile market on some other basis besides on a start-up basis and therefore their intent was not to foreclose

American from the Mobile market altogether. Coastal also explains that the September 5, 1986 waiver resulting from the put/call election, contained all-inclusive language which waived every no-compete clause in the agreement.

DISCUSSION

8. Pursuant to Section 22.13(a) of the Rules, "[e]ach application for a construction permit . . . shall . . . [d]isclose fully the real party or parties in interest, that are engaged in the Public Mobile Service. . . . As we noted in *W. P. Scamardo dba Hearne Mobilfone*, Mimeo No. 6570 at para. 4, n. 6: "This Section calls for the disclosure of all relevant real party in interest information, 'including' records of any ownership interests in the given proposal. The disclosure requirement is not limited to ownership information. . . ." We have also stated that the test for determining whether a third party is a real party in interest behind an application is whether that party has an ownership interest or is in a position to control the station. *See id.* Moreover, we noted in *Hearne* several factors that may be considered in making a determination of whether a third party is in a position to actually or potentially control the applicant. While several of the factors indicating such control are present in the case *sub judice*, we find that the most significant criterion of real party status is not present. That factor is "a motive for deception." *See id.* at para. 6.

9. As we noted in *Hearne*, "such a motive may be present where licensees are precluded from filing for additional frequencies due to a multiple ownership limitation rule." *Id.*[9] We have such a rule in Public Land Mobile Service. In our *First Report and Order* in General Docket No. 80-183, 80 FCC 2d 1337, 1353 (1982)(*Order*), we "limited paging applicants to one frequency per *initial* authorization and required exising operators applying for additional frequencies to submit traffic loading studies to support their applications. *Hearne*, at para. 6. (emphasis added).[10]

10. Thus, the Commission's primary concern is that a party not file more than one application in the same area. In both *Harvey* and *Hearne*, the employee filed an application *in the same market area* served by his employer, which would have violated the multiple ownership rule had the employee not deceived the Commission by filing in a different name. In the present case, American has not previously filed an initial application in Mobile, Alabama. Even if American could be said to control Coastal, such control of it would not be a violation of our rule limiting application to one frequency. Therefore, we find that American could not have been motivated to deceive the Commission by the need to circumvent our multiple ownership limitation rule.

11. Next, we find that Coastal was not motivated to deceive the Commission by any contractual limitation. Although the sale of stock transaction that would have initiated a waiver of the no-compete clause in American's contract with AMP was not consummated until September, 1986, after Coastal's application was filed, we find that American nonetheless had an adequate assurance that it could file such application when it filed on June 24, 1986, not only because American's counsel had advised it accordingly but also because it had received a declaratory ruling to the effect that the waiver of the no-compete clause was enforceable. Because we find that American lacked a motive to deceive the Commission, we find that AMP has not sufficiently raised a real party in interest issue.

ORDERING PARAGRAPHS

12. Accordingly, IT IS ORDERED, That the Petition to Deny or Designate Hearing, filed by Amercan Mobilphone Paging, Inc., IS DENIED.

13. IT IS FURTHER ORDERED, That the application of Coastal Express Communications, Inc., File No. 24346-CD-P/L-1-86, IS HEREBY GRANTED.

14. This order is issued under Section 0.291 of the Commission's rules and is effective on its release date. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order. *See* Section 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Kevin J. Kelley
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] AMP is a licensee in the Public Mobile Radio Service and currently provides both one-way paging and two-way mobile telephone service to the public in the Mobile, Alabama area.

[2] On February 19, 1988, Coastal submitted a minor amendment pursuant to Section 1.65 of the Rules disclosing that on December 15, 1987, Bowman was promoted to President of American; Bowman purchased newly-issued American stock giving him a ten percent ownership interest in American; and Bowman is seeking to sell his interest in Coastal.

[3] AMP also argues that with respect to a separate Coastal application, File No. 24318-CD-P/L-1-86, American had a motive to deceive the Commission by using the Coastal application as a front because American would not have been able to meet the loading requirements of Section 22.16 of the Rules and suggests that we consolidate it with our consideration of the captioned application. AMP notes that there are similar real party in interest issues raised with respect to both applications, but concedes that no such legal disability applies to the captioned application because AMP has no paging applications pending in the same market for which Section 22.16 requires a loading study. Therefore, we will not consolidate these two applications. AMP also filed a petition to consolidate eight Coastal applications including the captioned application, which we have decided not to consolidate for similar reasons.

[4] The Opposition includes a declaration from Michael Bowman verifying his ownership and control over Coastal.

[5] The Opposition includes a declaration by Steven Cannon, American's engineer, indicating that he would keep a record of his time spent on the Coastal's engineering.

[6] Pursuant to the agreement between American and AMP, Bernard Dittman, a shareholder of AMP could elect to purchase American's interest in AMP, provided that at the close of the sale of stock to Dittman, he waive or terminate the no-compete clause. On April 18, 1986, Dittman attempted to elect to purchase

American's AMP stock but to avoid the waiver clause. American obtained a declaratory judgment from an Alabama state court that Dittman could not elect to purchase without also binding himself to comply with the waiver clause. The sale was consummated on September 5, 1986 and then approved by the FCC.

[7] Here Coastal notes that a Mr. Robert Moyer, the local manager of American's West Virginia operations, has existing or pending PLMS facilities in the southern Florida Gulf Coast area and the Maryland-D.C.-Virginia area, all with the consent of American, even though Moyer is a full-time salaried employee of American.

[8] To support its argument, American attached a statement of William H. Sanders, President of American.

[9] AMP also cites *Gary G. Harvey*, Mimeo No. 6376 (Common Carrier Bureau, released August 16, 1985) and *Hearne* to support its position that the facts in the present case raise real party in interest issues because like the facts in *Harvey* and *Hearne*, there is an employment tie between the applicant and the alleged real party; and the applicant and alleged real party have used the same engineering firm and legal counsel.

[10] In the *Order* we further noted that we would require information about ownership and control in order to deter applicants from circumventing this limit by filing "numerous applications in the same area under different names. ." *Order* at n. 29.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-34

In re Applications of

HISPANIC KEYS BROADCASTING CORP.	File No. BPCT-850917KF
ERNEST A. VENDRELL	File No. BPCT-850918KE
CONSTANCE J. WODLINGER	File No. BPCT-850920KE
DELMAR COMMUNICATIONS, INC.	File No. BPCT-850920KN

For Construction Permit
for New Television Station
Key West, Florida

ORDER

Adopted: March 11, 1988; Released: March 18, 1988

By the Review Board: MARINO (Chairman), and BLUMENTHAL.

1. The application of Delmar Communications Inc., was denied in an Initial Decision released October 14, 1987, 2 FCC Rcd 6255. Delmar has failed to file exceptions to the Initial Decision by the due date. Section 1.276(f) of the Commission's Rules provides that: "when any party fails to file exceptions within the specified time to an Initial Decision which proposes to deny its application, such party should be deemed to have no interest in further prosecution of its application, and its application may be dismissed with prejudice for failure to prosecute." See also *Mark L. Wodlinger*, FCC 88R-6, February 5, 1988.

2. ACCORDINGLY, IT IS ORDERED, That the application of Delmar Communications, Inc., IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-109

In the Matter of

Amendment of Section 73.202(b), RM-5957
Table of Allotments,
FM Broadcast Stations.
(Basalt, Colorado)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 25, 1988; Released: March 21, 1988

By the Deputy Chief, Policy and Rules Division:

1. Basalt Communications Company ("petitioner") has filed a petition for rule making seeking the allotment of FM Channel 291A to Basalt, Colorado, as that community's first local broadcast service. Petitioner states that it will apply for the channel if it is ultimately allotted to Basalt, as requested.

2. A staff engineering study has determined that Channel 291A can be allotted to Basalt, Colorado, in conformity with the minimum distance separation requirements specified in Section 73.207(b) of the Commission's Rules, provided the transmitter therefor is located in an area at least 9.5 kilometers (5.9 miles) southwest of the community to avoid short spacing to Station KBPI(FM) (Channel 290C),[1] Denver, Colorado.

3. Since this proposal could provide a first local broadcast service to Basalt, Colorado, the Commission believes it is appropriate to propose amend- ing the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows;

	Channel No.	
City	Present	Proposed
Basalt, Colorado	--	291A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **May 10, 1988,** and reply comments on or before **May 25, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows:

Basalt Communications Company
Attn: Dan and Caren Lacy
1885 Ponder Heights Drive
Colorado Springs, CO 80906

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Although Station KBPI(FM) was licensed as a C1 station at the time this proposal was filed, its application for modification of license (BMLH860130KC) to operate as a Class C facility on Channel 290 was subsequently granted on June 10, 1987. The reference coordinates at the restricted site are as follows: 39-20-48; 107-08-18.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-111

In the Matter of

Amendment of Section 73.202(b), RM-5359
Table of Allotments,
FM Broadcast Stations.
(Vero Beach, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 16, 1988; Released: March 21, 1988

By the Chief, Policy and Rules Division:

1. The Commission has before it a petition for reconsideration filed by Treasure Coast Broadcasting Company, Limited Partnership ("Treasure Coast"), seeking reconsideration of a staff action returning its petition for rule making which proposed to upgrade the facilities for Station WGYL(FM), Vero Beach, to a Class C2 facility. Comments in support of the petition for reconsideration were filed by Ocala Broadcasting Corporation ("OBC"), licensee of Station WMMZ-FM (Channel 229C), Ocala, Florida.

2. By letter of February 3, 1987, the staff denied acceptance of the petition for rule making proposing to substitute Channel 229C2 for Channel 228A at Vero Beach, Florida, and to modify the Class A license for Station WGYL to specify the Class C2 channel.[1] In denying the request the staff pointed out that a Channel 229C2 allotment at Vero Beach would be short spaced (a) to the buffer protection for Station WMMZ(FM), Ocala, Florida (in effect until March 2, 1987), (b) to Station WSWN-FM, Belle Glade, Florida, by 2.8 kilometers, and (c) to a pending application filed by Station WLVE(FM), Miami Beach, Florida, by 6 kilometers. No decision was given on petitioner's request for waiver of the 2.8 kilometer short spacing to Belle Glade, Florida, at that time.

3. In its petition for reconsideration, Treasure Coast informs the Commission that the application filed by Station WLVE(FM), Miami Beach, Florida, was dismissed on December 5, 1986, and as a result of that action, the WLVE short spacing is no longer at issue here. It also points out that it is aware of WLVE's pending petition for reconsideration of the dismissal action. Thus, it contends, only two obstacles to the allotment remain. First, Treasure Coast argues that the short spacing to Station WSWN-FM, Belle Glade, is *de minimis* and may be waived in accordance with Commission precedent, and second, that Station WMMZ, Ocala, has no objection to the Channel 229C2 allotment.

4. Treasure Coast argues that the allotment of Channel 229C2 at Vero Beach would actually improve the existing short spacing between its station (WGYL) and the Belle Glade station (WSWN-FM), which was created in 1982 when the Commission approved the relocation of WGYL's transmitter to its present site (BPH 810730AD). According to Treasure Coast, the change from Channel 228A with a 2.8 kilometer co-channel short spacing to Channel 229C2, with a 2.8 kilometer adjacent channel short spacing, would reduce the amount of actual interference between the stations. Based on this theory, the switch of channels at Vero Beach would not worsen an existing short spacing, but instead would actually minimize the potential for mutually destructive interference to the reception of both stations.

5. With regard to the Ocala (Station WMMZ) situation, Treasure Coast references Section 73.208(c) of the Rules, whereby the 1.1 kilometer short spaced distance between WGYL and WMMZ could be rounded off to 1 kilometer or 0.621 miles, an even lesser distance than earlier noted. In a further effort to support the request for Channel 229C2 at Vero Beach, Treasure Coast notes its awareness of Commission policy of not granting waivers of the minimum distance separation rule (Section 73.207) at the rule making stage. It argues, however, that in view of the Commission's action in rule making proceedings, it appears that the principal, if not exclusive, rationale for this policy is the need for mileage exactitude in order to evaluate the overall impact of a short spacing. Treasure Coast also references the Commission's letter dismissing its petition for rule making, which suggests that granting a waiver at the application stage allows the Commission to know the exact mileage involved, based on the applicant's specified site, whereas, at the rule making stage, the exact site would be unknown and therefore could not be used to measure the impact to other nearby stations. It is the contention of Treasure Coast that the facts presented in its proposal for short spaced consideration are in keeping with an application stage waiver of the separation requirements, and there, as at the application stage, the transmitter site is a known fact, permitting an assessment using the same criteria.[2] Petitioner submitted a copy of an agreement with Ocala Broadcastion Corporation (WMMZ), in which OBC agrees not to oppose its petition for reconsideration.

6. The comments of OBC merely inform the Commission of its agreement with Treasure Coast not to oppose each other's efforts to achieve modification of their facility, as outlined in a written agreement between the licensees. Assuming each party carries out its obligation as agreed, its consulting engineer has provided assurance that WMMZ and WGYL can co-exist at their proposed site with no harmful interference.

7. We agree with the petitioner that no land site is available for a station operating on Channel 229C2 at Vero Beach, which would totally eliminate the short spacings mentioned herein. However, a staff engineering study has determined that a Channel 229C2 transmitter located approximately 4.6 kilometers (2.9 miles) southeast of the city would eliminate the short spacing to WMMZ (Ocala), and reduce the present short spacing to WSWN-FM (Belle Glade), by 0.5 kilometers (from 102.2 to 102.7 kilometers).[3] Since the proposal to modify the existing facilities for Station WGYL(FM) can be accomplished without creating any additional short spacing, it is unnecessary to act on petitioner's request for waiver. Based on the fact that no new short spacing will occur, we believe that the petitioner's request to upgrade its Class A facility can now be considered.[4]

8. Accordingly, in order to provide Vero Beach with its third wide coverage area channel, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Rules, with regard to the following:

	Channel No.	
City	Present	Proposed
Vero Beach, Florida	228A, 269A, 288A	229C2, 259C2, 279C2

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **May 10, 1988,** and reply comments on or before **May 25, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John R. Wilner
Bryan, Cave, McPheeters & McRoberts
1015 Fifteenth Street, N.W.
Suite 1000
Washington, D.C. 20005

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mark N. Lipp
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is

directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The petition was filed by WGYL Radio Corporation, former licensee of Station WGYL, Vero Beach, Florida (as of December 31, 1986).

[2] Treasure Coast cites North Texas Media, Inc. v F.C.C. 778 F.2d 28 (D.C. Cir. 1985) where the Court cited four cases in which the deminim is waiver rationale was applied by the Commission for short spacing of two miles, one mile (on two occasions), and 0.9 mile.

[3] The site coordinates for Channel 229C2 at Vero Beach are 27-36-04 and 80-22-40.

[4] The proposal for Channel 229C2 at Vero Beach, is short spaced to Station WLVE's pending application to operate as a full Class C facility (BPH 851220IB), which was dismissed on December 5, 1986. Thus, the modification can be accomplished only if the Commission denies the petitioner for reconsideration of that action, and WLVE retains its Class C1 status.

[5] Channels 259C2 and 279C2 have been proposed in Docket 86-284.

Before the
Federal Communications Commission
Wshington, D.C. 20554

MM Docket No. 88-110

In the Matter of

Amendment of Section 73.202(b),	RM-6134
Table of Allotments,	
FM Broadcast Stations.	
(Los Ybanez, Texas)	

NOTICE OF PROPOSED RULE MAKING

Adopted: February 24, 1988 **Released: March 21, 1988**

By the Deputy Chief, Policy and Rules Division:

1. At the request of Israel Ybanez ("petitioner"), the Commission considers herein a petition for rule making seeking the allocation of Channel 300C2 to Los Ybanez, Texas, as a first local FM service. Petitioner states he will apply for the channel, if allotted.

2. Section 307(b) of the Communications Act of 1934, as amended, provides that channels be allocated to "communities." A community for allocation purposes has been defined as an identifiable population grouping. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. However, absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic or cultural indicia to qualify it as a "community" for allotment purposes. See e.g., *Ansley, Alabama*, 46 FR 58688, December 3, 1981, *Cascade Village, Colorado*, 48 FR 19917, May 3, 1983, and *Ellwood, California*, 50 FR 13031, April 2, 1985. Here, petitioner states that Los Ybanez is an incorporated community in Dawson County, Texas. He states the current population is estimated at 250 persons, a decline since its incorporation in 1983 with 300 persons. We have been unable to identify coordinates for Los Ybanez from our official sources nor was it listed in the 1987 Rand McNally Road Atlas. Petitioner is asked to provide an official source for the coordinates of Los Ybanez as well as a map depicting the boundaries of the community. We have made no determination at this stage as to the community status of Los Ybanez for allotment purposes. Therefore, we request that petitioner submit additional information regarding Los Ybanez to demonstrate whether it has any businesses, social organizations or governmental units that identify themselves with Los Ybanez.

3. Petitioner specified a site he claims to be 8 kilometers west northwest of Los Ybanez for his transmitter.[1]

4. Since the coordinates provided by petitioner are located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government must be obtained.

5. We believe the public interest would be served by proposing the allocation of Channel 300C2 to Los Ybanez since it could provide the area with its first local FM service. Accordingly, the Commission seeks comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Los Ybanez, Texas	—	300C2

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **May 10, 1988,** and reply comments on or before **May 25, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

James K. Edmundson, Esquire
Kenkel, Barnard & Edmundson
1220 Nineteenth Street, N.W.
Suite 202
Washington, D. C. 20036
(Counsel for petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for the proposed site are 32-44-06 and 102-00-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-80

In the Matter of

Amendment of Section 73.202(b),	RM-5583
Table of Allotments,	RM-5942
FM Broadcast Stations.	
(Kingstree and McClellanville,[1]	
South Carolina)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 23, 1988 ; Released: March 21, 1988

By the Deputy Chief, Policy and Rules Division:

1. At the request of Davidson Communications, Inc. ("petitioner"), licensee of Station WWKT-FM, Kingstree, South Carolina, the Commission has before it the *Notice of Proposed Rule Making*, 52 Fed. Reg. 12216, published April 15, 1987, proposing the substitution of Channel 255C2 for Channel 252A at Kingstree and the modification of petitioner's license to specify operation on the higher powered frequency. Comments in support of the proposal were filed by the petitioner and Ocean Communications, Inc. ("Ocean"), licensee of Station WGMB, Georgetown, South Carolina, which has petitioned the Commission to substitute Channel 252C2 for its Channel 249A at Georgetown.[2] In addition, Charleston County Wireless Co. ("Wireless"), permittee of Station WCCG, Channel 249A, Folly Beach, South Carolina, filed "Comments and Counterproposal" requesting the substitution of Channel 249C1 or Channel 251C1 for its Channel 249A at Folly Beach.[3] Joseph Papp, III ("Papp") filed comments in opposition to the Kingstree substitution, counterproposing instead the allocation of Channel 255C2 to McClellanville, South Carolina, as the community's first local FM service.[4] Comments supporting the counterproposal were filed by Williamsburg County Broadcasting Company ("WCBC"). Reply comments were filed by the petitioner, Ocean, and Charleston County Wireless Co. ("Wireless").

2. Papp states that McClellanville is a small, isolated community located approximately 32 miles northeast of Charleston and 24 miles southwest of Georgetown. Papp contends that the economic base for McClellanville is commercial fishing, with about 200 boats using the community as a home port, and a number of different businesses providing service to the fleet. According to Papp, McClellanville is an incorporated community which is governed by an elected Mayor and a four-member city council, with its own police department, volunteer fire department and post office. WCBC supports the allocation of Channel 255C2 to McClellanville. It states that Kingstree currently receives local service from one FM and two AM stations. In addition, WCBC notes that Kingstree has allocated to it another channel which is not yet on the air.[5] WCBC contends that the need for McClellanville to receive its first local broadcast service clearly outweighs the need of Kingstree for an upgrade of an existing service. Papp and WCBC both state an intention to apply for Channel 255C2 if allocated to McClellanville.

3. Petitioner urges the substitution of Channel 255C2 for its Channel 252A at Kingstree. In support, it states that Kingstree's county, Williamsburg, has a 1980 U.S. Census population of 38,226 persons, of which 67% are Black and 43% are White. It believes that use of the higher powered channel would enable Station WWKT to provide news as well as general and emergency information to the residents of rural Williamsburg County. Ocean supports the substitution at Kingstree since it could enable grant of its contingent request to substitute Chanel 252C2 for its present Channel 249A at Georgetown, South Carolina, and the modification of its license for Station WGMB to specify the higher powered channel (MM Docket 87-202, 2 FCC Rcd 3557 (1987)) and the contingent request of Charleston County Wireless Co. to substitute Channel 251C1 for Channel 249A at Folly Beach, South Carolina (MM Docket 87-203, 2 FCC Rcd 3555 (1987)). Thus, it argues that the allocation of Channel 255C2 at Kingstree would better serve the public interest since it would promote efficient use of the spectrum.

4. Petitioner, in reply comments, contends that Papp's counterproposal should be disregarded since he failed to comply with Section 1.47 of the Commission's Rules.[6] Should the Commission fail to dismiss the counterproposal, it argues that the allotment of Channel 255C2 to Kingstree would better serve the public interest. Petitioner states that the substitution of Channel 255C2 for Channel 249A at Kingstree would enable Station WWKT-FM to increase its 1 mV/m coverage area from its present 636.9 to 3,300.4 square miles while also permitting increased service to the Georgetown and Folly Beach communities. Petitioner provides demographic data concerning Kingstree to buttress its argument that the community is more deserving of the higher powered Class C2 allotment than is McClellanville. It states that Kingstree, with a population which has grown from 3,381 persons in 1970 to 4,147 in 1980, is the county seat and trading and governmental center of Williamsburg County.[7] It states that Kingstree has a central business district containing typical stores and services, including a post office, two banks and a savings and loan association, a motel and modern shopping center. According to the petitioner, Kingstree has a council-manager type of municipal government which provides such services as police and fire protection, ambulance, rescue squad, and planning and zoning commissions. In addition, Kingstree has five public schools, administered by the County, the Williamsburg Academy, a private school with grades 1-12, and the Williamsburg Technical College, an accredited institution of advanced technical studies. Kingstree also has a 78-bed medical facility, as well as numerous religious and recreational facilities. Petitioner states that the community supports a weekly newspaper, *The Kingstree News*. It also claims that Williamsburg County is currently being transformed from a rural area economically dependent upon agriculture, to one which is increasing dependent upon industry, with major industries in the County and Kingstree producing pharmaceuticals, plastic materials, synthetic rubber and household plastics.

5. In comparison, petitioner states that McClellanville has a total population of only 436 persons, and is, by Papp's own admission, "merely a small, isolated fishing village." However, it believes that the needs of all the communities involved can be met if a Class A channel is allocated to McClellanville. To this end, it suggests either Channel 227A or 257A, which it states can be allocated in compliance with the Commission's spacing requirements and without conflicting with the proposed upgrades at Kingstree, Georgetown and Folly Beach. Such a solution, it contends, would be proper and sensible. Petitioner states that it is well established Commission policy to favor larger communities with the allocation of higher powered channels, citing *Carson City, Gardnerville - Minden and Sparks, Nevada*, 48 RR 2d 1700 (1981); *Chubbuck and Pocatello, Idaho*, 49 RR 2d 694 (1981); and *FM Assignment Policies and Procedures*, 51 RR 2d 807, 814; 90 F.C.C. 2d 88 (1982). It also contends that the fact that Kingstree already receives local service from one FM and two AM stations does not, by itself, warrant the allotment of Channel 255C2 to McClellanville. Petitioner states that the Commission has long recognized that the allocation of an additional allotment to a larger, dynamic community instead of a first allotment to a very small "quiet village" (communities of less than 1,000 population) is not inconsistent with the Commission's mandate to allocate frequencies in a fair and efficient manner, citing *Cherokee Broadcasting Co.*, 17 FCC 2d 121, 15 RR 2d 1205 (1969); *FM Channel Assignments*, 51 RR 2d 25, 29 (1983); and *Ruarch Associates*, 56 RR 2d 1593 (Rev. Bd. 1984). Thus, it concludes that the allotment of Channel 255C2 to Kingstree would be fully compatible with Commission precedent and the needs of the various communities involved herein.

6. Wireless agrees with the petitioner that the denial of the McClellanville counterproposal would further the public interest. It states that the Commission has repeatedly advised that there is no presumption of a need for a first local transmission service to a community of less than 1,000 persons, citing *Ruarch Associates, supra*, and contends that Papp has failed to present any meaningful public interest considerations such as any unique McClellanville needs. In addition, Wireless argues that the Papp counterproposal is also in conflict with the Georgetown and Folly Beach proposals, thus requiring a determination of spectrum efficiency by comparing the McClellanville proposal and the combined Kingstree, Georgetown and Folly Beach requests. To this end, it provides an engineering analysis which shows that Channel 255C2 at McClellanville could provide a new service to 109,148 persons in an area of 4,821 square kilometers compared to a combined total of 450,783 persons within an area of 15,912 square kilometers receiving service from the upgraded stations at Kingstree, Folly Beach and Georgetown.

7. Ocean, in its reply comments, agrees with the petitioner and Wireless that no presumption of need for a first local service should accrue to McClellanville because of its small size, citing *Wilmer E. Huffman*, 32 FCC 1, 22 RR 820 (1962), *Beacon Broadcasting* (*Memorandum Opinion and Order* released June 12, 1987, in MM Docket Nos. 84-1309 and 84-1310), *Cherokee Broadcasting Co., supra*, and *Ruarch Associates, supra*. It goes on to state that if Station WGMB at Georgetown is upgraded to Channel 252C2, it would increase its 1 mV/m service to 127,620 persons from its current 32,323 persons over an area of 2,245 square miles instead of only 564 square miles. Ocean does not argue with the finding that the allocation of Channel 255C2 at McClellanville would provide a new service to 109,148 persons but states that that most of these people reside in Charleston, South Carolina, which already receives five or more services. Ocean states that the *Notice* makes it clear that the filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved. Thus, taking into account McClellanville's small size and the availability of a Class A channel, it argues that the public interest would be served best by allocating the requested higher powered channels to Kingstree, Georgetown and Folly Beach and allocating a Class A to McClellanville.

DISCUSSION

8. In *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), the Commission set forth the following allocation priorities:

(1) First fulltime aural service;
(2) Second aural service;
(3) First local service;
(4) Other public interest matters.
[Co-equal weight given to priorities (2) and (3)]

In reviewing the pleadings before us, neither petitioner nor Papp has provided any showing of first fulltime or second aural service accruing from the allotment of Channel 255C2 to either community. However, the allocation of Channel 255C2 would provide McClellanville with its first local service while providing only an expanded third FM service at Kingstree. Although McClellanville is admittedly a small community, its status as a community for allotment purposes is not in question. Petitioner, Ocean and Wireless instead suggest that McClellanville does not warrant the higher powered Class C2 allotment but would be adequately served by a Class A allotment. To buttress this argument, they cite various Commission decisions where the Commission has favored the larger of competing communities with the Class C allotments. However, we find that none of these cases are on point. Both the *Carson City, Nevada, et al.* and *Chubbuck, Idaho, et al.*, cases, *supra*, optionally proposed the allocation of Class C or Class A channels to competing communities of disparate size. The decisions to allocate the Class A channels to the smaller community and the Class C to the larger, were based on findings that: (1) the Class C station would serve the same area regardless of its community of license since the two communities were in close proximity; (2) where service to unserved or underserved areas would occur, such service would be provided regardless of which community received the Class C allotment; and (3) Class A channels were not only available for allotment to the smaller community, but interest in their use had been expressed. In these decisions, the Commission also noted that Class C channels were generally reserved for larger communities except where Class A channels were either not available or the allotment would serve unserved or underserved areas. Here, the two communities are not located close to each other and while there are Class A channels which are available for allotment to McClellanville, the Commission is not aware of any interest in their use. Further, in *FM Assignment Policies and Procedures*,

supra, the Commission eliminated the policy of reserving higher powered channels for larger communities by stating that ". . .the Commission's own experience [had not] suggested a need to continue a policy that either refuses an assignment which fully meets the rules or makes it only after an extensive showing has been filed. Accordingly, we no longer intend to mandate the choice of a channel based on community size." 90 F.C.C. 2d 88, at 97.

9. We also find that the decision in *Ruarch Associates, supra*, is not on point. In that case, a Section 307(b) preference was not awarded to a smaller community seeking its first local service (Edinburg, Virginia) in competition with a larger community located five miles away which sought the same channel as its first competitive service (Woodstock, Virginia). In discussing the "Quiet Village Model" in *Debra D. Carrigan*, 58 R.R. 2d 96, at 104 (1985), the Commission stated:

> "Although finding that certain applicants in both cases had established that the exceedingly small communities without aural transmission outlets they had specified in their applications were, at least, 'identifiable communities' (as that term is used by the Commission), no measurable Section 307(b) preferences were due those applicants, in part, because: (1) the signals of any and all of the applicants would cover both competing communities; and (2) the larger competing communities had shown a far greater public interest need for a first *competitive* aural service than the fractionally smaller communities (population under 1000 in both cases) had shown for first aural transmission service." (footnote omitted)

Here, neither of these conditions apply. The primary signal (70 dBu) of Class C2 allotments extends approximately 33 kilometers from its transmitter site. However, McClellanville is located approximately 71 kilometers from Kingstree and the allotment of Channel 255C2 at either community would not provide service to both competing communities. Petitioner also is not seeking the allotment of Channel 255C2 to the larger community of Kingstree in order to provide it with its first competitive aural service but rather as an expanded third FM service (while Channel 231A is not yet on the air, the Commission has received applications to activate the channel). We also find that consideration of the combined population which would receive new service from upgrades at Folly Beach, Georgetown and Kingstree, as advanced by Wireless, is not appropriate herein since the requested upgrades by Wireless for Station WCCG at Folly Beach and by Ocean for Station WGMB at Georgetown are not a part of this proceeding. Additionally, as discussed in the separate *Reports and Orders* in the Georgetown and Folly Beach proceedings, the allotment of Channel 255C2 to McClellanville does not preclude the upgrading of their individual stations.

10. Based on the above discussion, we find that the public interest would be served by allocating a first local FM channel to McClellanville, South Carolina. While it may be true that a Class A channel could be allocated to McClellanville in order to provide the community with its first local FM service, we note that no interest in the use of such a channel has been expressed. Therefore, in accordance with Commission policy, we shall not consider the allocation of a Class A channel to McClellanville. See *Bradford, Vermont*, 2 FCC Rcd 6964 (1987). Channel 255C2 can be allocated to McClellanville in compliance with the Commission's minimum distance separation requirements without a site restriction.[8]

11. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **May 5, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
McClellanville, South Carolina	255C2

12. The window period for filing applications will open on **May 5, 1988,** and close on **June 6, 1988.**

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] This community has been added to the caption.

[2] The Commission issued the *Notice of Proposed Rule Making* in MM Docket No. 87-202, 2 FCC Rcd 3557 (1987), requesting comments on the substitution of Channel 252C2 at Georgetown, contingent upon action herein.

[3] We have not accepted the Wireless pleading as a counterproposal herein but as comments supporting the Kingstree allotment. Wireless has pending before the Commission a petition for rule making (MM Docket No. 87-203, 2 FCC Rcd 3555 (1987)) seeking the substitution of Channel 249C2 or Channel 251C2 for Channel 249A at Folly Beach, and the modification of its construction permit to specify either higher powered channel, as well as a supplement to its petition requesting the allotment of either channel as a Class C1. The Wireless proposal is contingent upon the outcome of the proceeding initiated by Ocean Communications to substitute Channel 252C2 for Channel 249A at Georgetown, South Carolina (MM Docket 87-202, 2 FCC Rcd 3557 (1987)). The allotment of Channel 249 or Channel 251, as either a Class C2 or C1, to Folly Beach is not in conflict with Channel 252A or Channel 255C2 at Kingstree. However, they are either contingent on or in conflict with the Georgetown allotment.

[4] Public Notice of the filing of the counterproposal was given on June 10, 1987, Report No. 1663.

[5] There are presently two applications pending for Channel 231A at Kingstree, which was allocated in MM Docket 84-231.

[6] Petitioner states that the counterproposal was filed with the Commission on June 1, 1987, attached to which was a Certificate of Service stating that a copy of the counterproposal had been mailed to the petitioner on that date. However, it provides a copy

of the envelope with a postmark date of June 4, showing that the counterproposal was not mailed until three days later. Thus, petitioner contends that the Papp counterproposal should be dismissed for failure to properly effect service. Section 1.47 of the Commission's Rules reads in part that "[w]here any person is required to serve any document filed with the Commission, service shall be made by that person or by his representative on or before the day on which the document is filed. . ." and that "[s]ervice by mail is complete upon mailing." We recognize that Papp failed to comply with the letter of Section 1.47 but do not believe that this failure warrants the dismissal of his counterproposal. The *Notice* herein specified June 1 and June 16 for the filing of comments and reply comments, and thus Papp's counterproposal was timely filed. In addition, the June 10, 1987, corrected Public Notice of Papp's counterproposal extended the reply comment date to June 25, 1987. Therefore, we feel that petitioner had adequate time in which to reply. Thus, Papp's counterproposal will be considered herein.

[7] All population figures are taken from the 1980 U.S. Census, unless otherwise indicated.

[8] The coordinates for this allotment are: North Latitude 33o, 05', 18"; West Longitude 79o, 27', 36".

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-203

In the Matter of

Amendment of Section 73.202(b), RM-5799
Table of Allotments,
FM Broadcast Stations.
(Folly Beach, South Carolina)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 23, 1988 ; Released: March 21, 1988

By the Deputy Chief, Policy and Rules Division:

1. At the request of Charleston County Wireless Company ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 2 FCC Rcd 3555 (1987), proposing the substitution of Channel 249C2 or Channel 251C2 for Channel 249A at Folly Beach, South Carolina, and the modification of its permit for Station WCCG to specify either of the higher powered channels. Comments and reply comments were filed by the petitioner; Ocean Communications, Inc. ("Ocean), licensee of Station WGMB(FM), Georgetown, South Carolina; Davidson Communications, Inc., licensee of Station WWKT-FM, Kingstree, South Carolina; and Joseph Papp, III ("Papp"). Petitioner also filed a supplement to its petition for rule making requesting the allocation of Channel 249 or 251 as a Class C1 instead of the originally requested Class C2.

2. All of the parties support the allocation of a higher powered channel to Folly Beach. Petitioner urges the allocation of either channel as a Class C1. It states that Channel 249C1 can be allocated to Folly Beach if Station WGMB at Georgetown, South Carolina, is upgraded to specify Channel 252C2, as proposed in MM Docket 87-202 (2 FCC Rcd 3557 (1987)). If the proposed upgrade at Georgetown is not adopted, it states that Channel 251C1 can be allocated to Folly Beach in light of the Commission's recent modification of the license of Station WCOS at Columbia, South Carolina, from Channel 250C to Channel 248C1 (MM Docket 86-72, adopted March 25, 1987, recons. pending). Petitioner reiterates that the modification of its permit to specify the higher powered channel would enable it to comply with Section 73.315 of the Commission's rules by providing all of Folly Beach with a city-grade 70 dBu signal which it cannot now do if it becomes licensed to operate on Channel 249 as a Class A. In addition, petitioner contends that the requested increase in Station WCCG's facilities would also allow it to provide an additional service to 140,000 persons.

3. Ocean and Davidson both favor the allocation of Channel 249C2 at Folly Beach since its use is compatible with their requests for adjacent channel upgrades at Georgetown and Kingstree, South Carolina, respectively. Papp notes that the allocation of Channel 255C2 to McClellanville is dependent upon Channel 252A remaining at Kingstree. He therefore opposes petitioner's Channel 251C1 proposal for Folly Beach since this allotment requires the deletion of Channel 252A from Kingstree. He states that the allocation of a first local service at McClellanville is superior to the allocation of a Class C1 channel at Folly Beach which would permit improved service by Station WCCG but not a new primary or first local service. However, he supports the allocation of Channel 251C2 to Folly Beach since it would not conflict with his McClellanville proposal.

4. Ocean responds that the Papp counterproposal should not be preferred over its request to upgrade to a Class C1 at Folly Beach. It contends that more is involved here than the choice between a first local at McClellanville, with its small population of 436 persons, and an upgrade at Folly Beach. Rather, it submits that there are three modifications which would be denied by the McClellanville proposal: (1) Channel 255C2 at Kingstree (MM Docket 87-80); (2) Channel 252C2 at Georgetown (MM Docket 87-202); and (3) Channel 249C2 at Folly Beach. Thus, it argues that the allocation of a Class C2 channel to the small community of McClellanville, should not prevail. In fact, it believes that the Commission should consider the three rule makings at the same time and urges a result which would allocate Channel 255C2 to Kingstree, Channel 252C2 at Georgetown, Channel 249C2 to Folly Beach, and Channel 227A or 257A at McClellanville.

5. Initally, we find that no public interest benefit would accrue from the consolidated consideration of this proceeding with the Kingstree- McClellanville and Georgetown proceedings described above. Our review of these proposals shows that Class C2 allotments can be made to both Georgetown and Folly Beach regardless of the outcome of the Kingstree-McClellanville rule making. See *Reports and Orders* in MM Dockets 87-80 and 87-202, adopted this date, which allocate Channel 255C2 to McClellanville and Channel 249C2 to Georgetown. Based on our review of the pleadings before us, we believe the public interest would be served by substituting Channel 251C2 for Channel 249A at Folly Beach and the modification of petitioner's permit for Station WCCG according, since it could enable the station to encompass all of Folly Beach within its 70 dBu city grade signal We have considered petitioner's supplemental request for the allotment of a Class C1 to Folly Beach. However, we find that Channel 251C1 cannot be allocated in compliance with the Commission's minimum distance separation requirements since it would be short- spaced to Channel 252A at Kingstree, South Carolina. In addition, Channel 251C1 at Folly Beach conflicts with the pending request of Bohanan Broadcasters, Inc. to substitute Channel 252C1 for Channel 252A at Jesup, Georgia, and the substitution of Channel 251A for Channel 252A at Swainsboro, Georgia (RM-6040), as well as being contingent upon the downgrading of Station WCOS, Columbia, South Carolina, to specify operation on Channel 248C1, which is under reconsideration in MM Docket 86-72. See para. 2, *supra*. Similarly, in light of petitioner's statement in reply comments that it would accept a Class C2 allotment so as not to conflict with the requested upgrade of either the Kingstree or Georgetown stations, we will not consider the allocation of Channel 249C1 to Folly Beach since it would conflict with the upgrading of Station WGMB to Channel 249C2 at Georgetown, South Carolina.

6. Based on the record before us, we believe that the public interest would be served by providing Folly Beach with a Class C2 allotment so that the community and its environs can receive expanded radio service. A staff engineering study has shown that Channel 251C2 can be allocated to Folly Beach in compliance with the Commission's minimum distance separation requirements and can be used at the present transmitter site of Station WCCG.[1] Thus, as requested, we shall substitute Channel 251C2 for Channel 249A at Folly Beach and modify petitioner's permit for Station WCCG to specify operation on the higher powered channel.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **May 5, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Folly Beach, South Carolina	251C2

8. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the permit of Charleston County Wireless Company for Station WCCG, Folly Beach, South Carolina, IS MODIFIED effective **May 5, 1988,** to specify operation on Channel 251C2, in lieu of Channel 249A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are: North Latitude 32o, 39', 57"; West Longitude 80o, 03', 11".

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Amendment of Part 2 to Remove
Footnotes NG133 and 569

ORDER

Adopted: March 14, 1988; Released: March 22, 1988

By the Managing Director:

1. This item deletes two obsolete footnotes to the Table of Frequency Allocations in Section 2.106 of the Rules. Nongovernment (NG) footnote NG133 states that stations authorized in the band 73.0 - 74.6 MHz as of December 1, 1961, may continue to operate until December 31, 1985. International footnote 569 states that in Region 2, the fixed, mobile and broadcasting services previously authorized in the band 73.0 - 74.6 MHz may continue to operate until December 31, 1985. Since December 31, 1985, has passed, footnotes NG133 and 569 are now obsolete and are therefore removed.

2. This action is considered to be editorial in nature. Accordingly, IT IS ORDERED that footnotes NG133 and 569 in Part 2 of the Commission's Rules ARE REMOVED pursuant to the authority of 47 U.S.C. Sections 154(i), 302, and 303, and pursuant to Section 0.231(d) of the Commission's Rules. Because the removal of NG133 and 569 is nonsubstantive, the notice and comment provisions as well as the effective date requirements of the Administrative Procedure Act are inapplicable. This action becomes EFFECTIVE immediately.

FEDERAL COMMUNICATIONS COMMISSION

Edward J. Minkel
Managing Director

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Petition to Amend Section 97.7
of the Commission's Rules to
Expand Technician Class Operator
Privileges.

ORDER

Adopted: March 11, 1988; Released: March 22, 1988

By the Chief, Private Radio Bureau:

1. On November 9, 1987, Dr. Howard Elmore McKeathian of San Bernardino, California, filed a petition to amend Section 97.7 of the Commission's Rules, 47 C.F.R. § 97.7, to expand the privileges available to Technician Class amateur operators.

2. Dr. McKeathian notes that a Technician Class operator does not have any authorized frequency privileges in the 3-30 MHz high frequency (HF) amateur frequency bands, except those privileges also authorized to Novice Class operators. He believes that such limitations impede the communications that can be engaged in by Technician Class operators and cites specifically marine emergency situations and disasters such as forest fires. Dr. McKeathian requests additional HF privileges so that public needs can be better served by Technician Class operators and the amateur service made more enjoyable to individual Technician Class operators.

3. The petition addresses the existing amateur operator license structure, requirements and privileges. The Commission's Rules concerning amateur operator privileges, as contained in Part 97, 47 C.F.R. §§ 97.1-97.523, were adopted after careful consideration was given to thousands of comments filed by interested parties in five major rule making proceedings.[1] The operator license classes and associated privileges were developed to provide motivation for amateur operators to advance their skills in both the communications and technical phases of the radio art. Nothing presented in the instant petition indicates that the basic structure of the amateur licensing program is not achieving its goals.

4. The petition is repetitive of issues considered in previous Commission decisions. Therefore, the initiation of a rule making proceeding by the full Commission is not warranted. In view of the foregoing, and pursuant to the authority contained in Sections 0.331 and 1.401(e) of the Commission's Rules, 47 C.F.R. §§ 0.331 and 1.401(e), the petition IS DENIED. Pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, review by the full Commission of this action, which is taken under delegated authority, may be requested.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

FOOTNOTE

[1] Docket 9295, 16 Fed. Reg. 1237 (1951); Docket 10173, 18 Fed. Reg. 136 (1953); Docket 15928, 32 Fed. Reg. 12682 (1967); Docket 20282, 41 Fed. Reg. 25013 (1976) and 43 Fed. Reg. 15324 (1978); and PR Docket 86-161, 52 Fed. Reg. 5115 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Petition to Amend Section 97.23
of the Commission's Rules to
Eliminate the Telegraphy
Requirement for Novice and
Technician Class Operator Licenses.

ORDER

Adopted: March 11, 1988; Released: March 22, 1988

By the Chief, Private Radio Bureau:

1. On October 26, 1987, Ben Johnson of Winfield, Iowa, filed a petition to amend Section 97.23 of the Commission's Rules, 47 C.F.R. § 97.23, to eliminate examination element 1(A), the 5 words per minute telegraphy requirement for the Novice and Technician Class operator licenses. Mr. Johnson stated that such change would better serve the public because it would result in more amateur operators.

2. In effect, the requested amendment would make the Novice and Technician Class operator licenses "no-code" licenses. Treaty obligations, however, require that any person seeking a license to operate the apparatus of an amateur station shall prove that he/she is able to send and receive text correctly in Morse code signals. *See* ITU Radio Regulation No. 2735. Although administrations may waive this requirement in the case of stations making use exclusively of frequencies above 30 MHz, Novice and Technician Class operators have significant privileges below 30 MHz. These include control operator privileges in the 10, 15, 40 and 80 meter bands.

3. Further, on December 14, 1983, the Commission adopted a *Report and Order* in PR Docket No. 83-28, 49 Fed. Reg. 1097 (1984), declining to permit persons to obtain amateur operator licenses without first demonstrating proficiency in telegraphy. Nearly 5,000 persons and organizations submitted comments in the proceeding. By a margin of approximately 20 to 1, they favored maintaining the current nature of the amateur service, including retention of the telegraphy requirement as an integral feature of the service. The Commission gave three reasons for the decision to retain the telegraphy requirement. First, a 5 words-per-minute telegraphy requirement does not constitute a significant entry barrier to the amateur service. Second, knowledge of the international Morse code continues to be relevant to everyday usage. Third, a code requirement for every license class is important to maintaining the traditional public service role of the amateur service in emergencies involving public safety and the national defense. No data have been submitted to the Commission that would warrant a change in the telegraphy requirement.

4. Because the matter of establishing a "no code" operator license was previously considered and rejected by the Commission, the petition is repetitive. Further, the proposed change would conflict with treaty obligations. Therefore, pursuant to Sections 0.331 and 1.401(e) of the Commission's Rules, 47 C.F.R. §§ 0.331 and 1.401(e), the petition to amend Section 97.23 IS DENIED. Pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, review by the full Commission of this action, which is taken under delegated authority, may be requested.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

BEEP BEEP SUNCOAST — File No. 23751-CD-P/L-04-87

For authorization to establish new two-way stations operating on the frequency 152.57 MHz in the Public Land Mobile Service at Zephyrhills and Naples, Florida and on the frequency 152.66 MHz in the Public Land Mobile Service at Tampa and Fort Myers, Florida

and

Daniels & Associates, Inc. D/B/A INTERLINK COMMUNICATIONS OF FLORIDA — File No. 24589-CD-P/L-1-87

For authorization to establish a new base station operating on 152.57 MHz in Naples, Florida

ORDER ON RECONSIDERATION

Adopted: March 11, 1988; Released: March 22, 1988

By the Chief, Mobile Services Division:

1. On December 4, 1987, the Mobile Services Division (MSD) released a Memorandum Opinion and Order dismissing three of the four above-captioned applications filed by Beep Beep Suncoast, Inc. (BBS).[1] *See Beep Beep Suncoast, Inc.*, DA 87-1717, released December 4, 1987 (MO&O). BBS has filed a petition for reconsideration requesting that these three applications be reinstated *nunc pro tunc* and that the four applications heretofore consolidated, be considered separately for purposes of reconsideration and reinstatement *nunc pro tunc*. No opposition was filed.

2. On December 7, 1987, the MSD returned the captioned application filed by Daniels & Associates d/b/a Interlink Communications of Florida (Daniels). Daniels has filed a petition for reconsideration of that MSD action. No opposition was filed.

3. Because both petitions for reconsideration, requesting reinstatement of the petitioners' respective applications, are based upon the contention the FCC erred in returning the applications, we will address both petitions for reconsideration in this order. We will also address the issues raised by General in its petition to deny against BBS that the MO&O found to be moot.

4. We find that the applications of BBS that were dismissed in the MO&O should be reinstated *nunc pro tunc*.[2] First, we find that BBS' proposal at Naples, Florida will not cause interference to the RAM Communcations' Station KNKC419. As shown in the engineering statement submitted with the BBS' petition for reconsideration, RAM is not authorized to operate on 152.57 MHz at Naples, Florida. Rather, RAM is authorized to operate on 152.78 MHz at Naples, Florida. It appears that the correct license information was not in the Commission's database. General argues that BBS' proposal at Naples is defective because it proposes the use of a side-mounted antenna for which BBS has failed to supply engineering information. However, such engineering information is only required when the antenna is side-mounted "near a structure and the radiation pattern is in any way *affected* by the mounting structure." *See* Section 22.15(j)(4) of the Rules. (emphasis added) We note that when the proposed antenna is mounted in accordance with the manufacturer's specifications, and the applicant has submitted the radiation pattern that will be produced by mounting the antenna in accordance with those specifications, we do not need any additional engineering information. BBS' original application shows that its antenna is to be mounted in accordance with the manufacturer's recommended mounting method and has submitted the radiation pattern that will be produced by such mounting. Had BBS intended to deviate from the manufacturer's method of side-mounting the antenna, we would need to know how such deviation affected the manufacturer's radiation pattern. Therefore, we find that BBS has complied with Section 22.15(j)(4) and we are reinstating BBS' proposal for Naples, Florida *nunc pro tunc*.

5. Next, we find that BBS' proposal at Fort Myers, Florida does not cause interference to United Telephone Company's (UTC's) Station KRM968, as stated in the MO&O. As shown in BBS' engineering statement, the MSD staff used interpolation of the antenna radiation pattern between 135 and 180 radials, when it should have used the actual figures shown on the radiation pattern for the interstation (172.7 radial, to arrive at the results in its interference study. Had the MSD used the actual antenna gain for the interstation radial, the result would have indicated no harmful interference to UTC's protected facility. Further, General has failed to demonstrate that BBS' Ft. Myers proposal is defective. General argues that the Ft. Myers, Florida application is defective because the proposed antenna radiation pattern is "significantly different" from the pattern described by the manufacturer of the proposed antenna. We have reviewed both antenna patterns and note that they are very similar. An interference study based on the manufacturer's pattern would in fact provide even greater protection to General's existing Station KIY397 at Bee Ridge, Florida, than that presently shown in the Ft. Myers proposal. Regardless of which radiation pattern is considered, no interference would be caused. [3] Therefore, we are reinstating BBS' proposal at Fort Myers *nunc pro tunc* and granting it. Third, BBS' proposal at Zephyrhills, Florida does not cause interference to General's Station KIY440, as stated in the MO&O. As shown in BBS' engineering statement, the results of the MSD's interference study were incorrect because the Commission's study was based on obsolete station parameters. Therefore, we are reinstating *nunc pro tunc* BBS' proposal at Zephyrhills.

6. Further, we find that the proposal filed by Daniels that was dismissed in a letter released by the MSD on December 7, 1987 should be reinstated *nunc pro tunc*. We find that Daniels' proposal at Naples, Florida does not cause interference to Station KNKC419. As shown in Daniels' engineering statement, submitted with its petition for reconsideration, Station KNKC419 is not authorized to operate on 152.57 MHz in Naples, Florida. Rather, Station KNKC419 is authorized to use 152.78 at Naples, Florida. It appears that the correct license information was not in the Commission's database. Therefore, we are reinstating *nunc pro tunc* Daniels' proposal at Naples, Florida.

7. Initially, the BBS filed four separate applications for the captioned locations. For purposes of administrative expediency, these applications were consolidated and considered as one application for four transmitter locations. In the MO&O, we granted BBS' Tampa application and dismissed the other three applications. Thus, Section 22.32(d) of the Rules would appear to require BBS to return the instrument of authorization for Tampa pending any reconsideration. In its petition for reconsideration, BBS requested that we separate its applications, as they were originally filed, and assign each a separate file number. Because we find that no party would suffer any prejudice by allowing the Tampa application to remain final, we will grant BBS' request and reassign the applications new file numbers as follows: to the Tampa, Florida application, File No. 23751-CD-P/L-04-87-A, to the Naples, Florida application, File No. 23751-CD-P/L-04-87-B, to the Fort Myers, Florida application, File No. 23751-CD-P/L-04-87-C, and to the Zephyrhills, Florida application, File No. 23751-CD-P/L-04-87-D. We note that by assigning each application a separate file number, we have permitted the grant of BBS' Tampa, Florida application to remain final.

ORDERING PARAGRAPHS

8. Accordingly, IT IS ORDERED That the Petition for Reconsideration filed by Beep Beep Suncoast, File No. 23751-CD-P/L-04-87, and the Petition for Reconsideration filed by Daniels & Associates, Inc. d/b/a Interlink Communications of Florida, File No. 24589-CD-P/L-1-87, ARE HEREBY GRANTED.

9. IT IS FURTHER ORDERED, That the Petition to Deny filed by General Telephone Company, IS DENIED.

10. IT IS FURTHER ORDERED, That the applications of Beep Beep Suncoast, Inc., File Nos. 23751-CD-P/L-04-87-B, 23751-CD-P/L-04-87-C and 23751-CD-P/L-04-87-D and that the application of Daniels & Associates, Inc. d/b/a Interlink Communications of Florida, File No. 24589-CD-P/L-1-87, BE REINSTATED AND ARE RETURNED TO PENDING STATUS and a lottery will be to resolve any mutually exclusivity between applications filed by the captioned parties. The lottery will be held at a time and place to be specified in a subsequent public notice.

11. IT IS FURTHER ORDERED That the application of Beep Beep Suncoast, Inc. at Tampa, Florida, File No. 23751-CD-P/L-04-87-A IS GRANTED effective on the date of the release of this order.

12. IT IS FURTHER ORDERED That the application of Beep Beep Suncoast, Inc. at Ft. Myers, Florida, File No. 23751-CD-P/L-04-87-C IS GRANTED effective on the date of the release of this order.

FEDERAL COMMUNICATIONS COMMISSION

Kevin J. Kelley
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] The MO&O addressed an issue raised by General Telephone Company (General) with respect to BBS' Tampa proposal and granted the Tampa proposal, but found that the allegations raised by General with respect to BBS' Naples and Ft. Myers proposals were moot in light of the MO&O's independent determination that BBS had not submitted an interference-free showing for its Naples, Ft. Myers and Zephyrhills proposals.

[2] *Nunc pro tunc* treatment may be given to reinstate applications which have incorrectly been dismissed. *Mobile Telecommunications Corp.*, 49 Rad. Reg. 2d (P&F) 1506, 1511-12 (1981). *See* also Jackson Signal Company, 74 FCC 2d 514 (1979) and Communications Gaithersburg, Inc., 60 FCC 2d 537 (1976).

[3] In cases where there are disputes involving antenna patterns, the staff will rely on the antenna pattern from the manufacturer.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-456

In re Applications of

SOUTH CAROLINA EDUCATIONAL TELEVISION COMMISSION
Aiken, South Carolina

File No. BPED-840629I0

For Construction Permit for
a New Educational FM Station

Appearances

Craig J. Blakeley, Esquire, on behalf of South Carolina Educational Television Commission; *Y. Paulette Laden, Esquire*, and *Stephen Yelverton, Esquire*, on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

SUMMARY DECISION OF ADMINISTRATIVE LAW JUDGE JOSEPH STIRMER

Issued: March 10, 1988; Released: March 22, 1988

PRELIMINARY STATEMENT

1. This proceeding was designated for hearing by *Hearing Designation Order*, DA 86-286, released December 5, 1986 (51 Fed. Reg. 45041, published December 16, 1986). Originally, two mutually exclusive applications were designated. However, following a settlement agreement, approved by *Memorandum Opinion and Order* of the Presiding Judge, FCC 87M-2270, released September 21, 1987, only the application of South Carolina Educational Television Commission (SCETC) remained in hearing status.

2. The *Hearing Designation Order* specified the following issues:

> 1. To determine, with respect to SCETC, whether, in light of the evidence adduced concerning the deficiency set forth above in this Order, the applicant is financially qualified.
>
> 2. To determine: (a) the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest, and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.
>
> 3. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), the extent to which each of the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants; and whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.
>
> 4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

3. Because one of the designated issues was a 307(b) issue, the two mutually exclusive applicants made a showing in their joint petition for approval of settlement agreement that 307(b) objectives would not be duly impeded by approval of the settlement agreement. The Presiding Judge agreed and so ruled in granting the joint request approving the settlement agreement. (*See* , *Memorandum Opinion and Order*, FCC 87M-2770.) As a result of this action, Issues 2 and 3 have become moot, and the only outstanding issue with respect to SCETC is Issue 1, a financial issue.

FINDINGS OF FACT

4. SCETC filed a "Motion for Summary Decision" on February 8, 1988. SCETC seeks summary decision on the financial issue specified against its application. In support of its request, SCETC demonstrates that 126,250 will be required to construct the proposed station and to operate it for 90 days. To meet its cost of construction and operation, SCETC relies primarily upon funding from the Public Telecommunications Facilities Program of the National Telecommunications and Information Administration (NTIA). Specifically SCETC, by amendment filed February 3, 1988,[1] indicated that it had been awarded a grant in the amount of86,000 by NTIA for the purpose of constructing and operating the proposed station. Moreover, the conditions necessary to obtain these funds have been met by SCETC, and there is reasonable assurance that such funds will be available. In addition, SCETC has shown the availability of funds in the amount of40,000 from the ETV Endowment of South Carolina (ETV) and has further shown the ability of ETV to make such funds available. Thus, SCETC has shown the availability of126,250, and this is sufficient to build and operate the station.

CONCLUSIONS OF LAW

5. By virtue of a grant from NTIA and further funds to be supplied by ETV Endowment of South Carolina, SCETC has shown that it is financially qualified to build and operate its proposed station. Specifically,126,250 will be available to meet anticipated costs of an equal amount. The Commission previously has stated "[o]ur experience indicates that in making our statutory finding as to financial qualifications, greater leeway must be accorded the educational station, because of its very nature." *NTA Television Broadcasting Corp.*, 22 RR 273, 291 (1961); *see*,

Northern California Educational Television, Association, Inc., 1 RR 2d 434, 441-442 (ALJ 1963). In view of the Findings and the Commission's policy, the financial issue will be resolved in favor of SCETC.

Accordingly, IT IS ORDERED that the unopposed "Motion for Summary Decision," which has the support of the Mass Media Bureau,[2] filed by South Carolina Educational Television Commission on February 8, 1988, IS GRANTED, and the financial issue is resolved in favor of SCETC;

IT IS FURTHER ORDERED that the application of South Carolina Educational Television Commission for a construction permit for a new educational FM station at Aiken, South Carolina, IS GRANTED. [3]

FEDERAL COMMUNICATIONS COMMISSION

Joseph Stirmer
Administrative Law Judge

FOOTNOTES

[1] *See* , *Order*, FCC 88M-651, released March 10, 1988, accepting such amendment.

[2] "Mass Media Bureau's Comments on Motion for Summary Decision" were filed February 9, 1988.

[3] In the event that exceptions are not filed within 30 days after the release of this Summary Decision, and the Commission does not review the case on its own motion, this Summary Decision shall become effective 50 days after its public release, pursuant to 47 C.F.R. 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-363

In re Applications of

MARTIN INTERMART, INC. Las Vegas, Nevada	File No. BPH-821020AP
GARY E. WILLSON Paradise, Nevada	File No. BPH-821021AI
FREMONT BROADCASTING CORPORATION Las Vegas, Nevada	File No. BPH-821021AP

For Construction Permit for a New FM Broadcast Station

Appearances

Gary *S. Smithwick*, on behalf of Martin Intermart, Inc.; *A. Wray Fitch, III*, on behalf of Gary E. Willson; and *Gene A. Bechtel* and *Ann C. Farhat*, on behalf of Fremont Broadcasting Corporation.

DECISION

Adopted: March 9, 1988; Released: March 22, 1988

By the Review Board: MARINO (Chairman), BLUMENTHAL, ESBENSEN.

Board Member BLUMENTHAL:

1. This comparative broadcast proceeding involves the three remaining mutually exclusive applications of Martin Intermart, Inc. (Martin), Gary E. Willson (Willson), and Fremont Broadcasting Corporation (Fremont) for authority to construct and operate a new FM broadcast station on Channel 278C at Las Vegas or Paradise, Nevada. In *East Las Vegas Broadcasting, Inc.*, MM 7113, released September 30, 1986 (*Notice*, 51 Fed. Reg. 35688, published October 7, 1986) (*Hearing Designation Order*), these applications (as well as five others subsequently dismissed) were designated for consolidated hearing on a Section 307(b) issue to determine which proposal would best provide a fair, efficient and equitable distribution of radio services, as well as on a contingent comparative issue. Thereafter, presiding Administrative Law Judge Edward J. Kuhlmann (ALJ) granted Fremont's motion to enlarge the scope of the comparative issue, permitting Fremont to adduce evidence of its proposed specialized (Spanish-language) programming. *Memorandum Opinion and Order*, FCC 86M-3621, released December 15, 1986, at para. 5 & n.1. In an *Initial Decision*, 2 FCC Rcd 5684 (ALJ 1987) (*I. D.*), the ALJ first found that no decisional Section 307(b) choice could be made between the Las Vegas and Paradise proposals, *I. D.*, paras. 3-4, 19, and then determined that Willson comparatively outranked the other applicants, in that Willson's preferences for diversification of mass media control and ownership/management "integration" outweighed any Fremont preference for specialized programming. *Id.*, at paras. 5-17, 21-25.

2. This proceeding is now before the Review Board on exceptions to the *I. D.* filed by the parties. We have reviewed the *I. D.* in light of the exceptions and briefs, oral argument held January 22, 1988, and our independent examination of the record. We adopt the ALJ's findings of fact and conclusions of law, except as modified herein, and affirm his ultimate conclusion that a grant of the Willson application is most consistent with the Commission's *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965) (*Policy Statement*), and governing case precedent.

3. *Diversification of Mass Media Control.* As we recently repeated:

> The factor of "primary significance" enshrined by the *Policy Statement* is the diversification of control of the media of mass communications. 1 FCC 2d at 394. Under a 20-year gloss of case precedent, and *ceteris paribus*, an applicant having no other attributable mass media interests will all but certainly prevail over a party with such media interests.

Newton Television Limited, FCC 88R-4, released February 5, 1988, at para. 3 (citations omitted). The ALJ, at *I. D.*, paras. 5-6, 20, found that only Willson had no attributable mass media ownership interests. In contrast, Martin's sole stockholder, James E. Martin, Jr., controls two radio stations in Florida and one radio station in South Carolina. However, these stations are not proximate (both being more than 2,000 miles from Las Vegas). Next, three of Fremont's stockholders (holding an aggregate 90% of Fremont's stock) own 83% of the stock of the licensee of Station KREL-AM, Henderson, Nevada, which community is proximate to Las Vegas, Fremont's proposed community of license. The ALJ therefore concluded that Willson ranked first under the "diversification" factor, Martin ranked second, and Fremont third. While Martin has recently divested its three southern U.S. radio stations, Martin concedes that it "cannot upgrade its comparative posture by the divestiture of the stations." Martin Br. at 4-5 & n.1. Instead, Martin asserts that even its legally "attributable" ownership interests are *de minimis*. *Id.*, at 5. For its part, Fremont claims that its divestiture of KREL-AM, in May 1987, should be recognized for comparative "diversification" purposes, claiming that it has "complied with the spirit and intent" of the Commission's new "AM-daytime preference" policy enunciated in *FM Broadcast Assignments (BC Docket No. 80-90), Second Report and Order*, 101 FCC 2d 638, 643-647 (1985), *on reconsideration*, 59 RR 2d 1221 (1986), *further reconsideration denied*, 2 FCC Rcd 481 (1987), *aff'd sub nom. National Black Media Coalition v. FCC*, 822 F.2d 277 (2d Cir. 1987); and, in any event, that its ownership interest of KREL-AM was insignificant because of the purported "'over-radioed' condition of the Las Vegas market." Fremont Br. at 19-36. We shall deny these Martin and Fremont exceptions for reasons that follow.

4. *Martin*. According to the *Policy Statement*, 1 FCC 2d at 394-5, and as the Commission has more recently opined:

> Although not as significant as media holdings in the proposed community of license, or interests in the remainder of the proposed service area, media holdings generally in the United States must still be considered under the diversification factor.

CJL Broadcasting, Inc., 95 FCC 2d 544, 549 n.26 (1983), *modifying* 88 FCC 2d 750 (Rev. Bd. 1981). In the *CJL* case, involving competing FM applications for Menominee, Michigan, the Commission - upon review of the Board's earlier decision - increased one applicant's "diversificiation" demerit significantly because, *inter alia*, the disfavored applicant "held indirect ownership interests in two other broadcast stations." *Id.* at 549. The extent of these other media interests in *CJL* was as follows: a 48.545% stockholder of the Menominee applicant owned 40% of the licensee of an AM-FM combination in Oroville, California. *See* 88 FCC 2d at 768. By contrast, the extent of Martin's legally "attributable" ownership interests in this proceeding - sole ownership or control of three radio stations by Martin's sole stockholder - is at least as significant as the interests in distant stations held by the disfavored applicant in *CJL*. Therefore, Martin's demand that its legally "attributable" media ownership interests be regarded as *de minimis* must be here rejected. We affirm the ALJ's award of the diversification preference to Willson over Martin. *See Christian Broadcasting of the Midlands, Inc.*, 99 FCC 2d 578, 579-581 (Rev. Bd. 1984), *aff'd*, 103 FCC 2d 375, 376 nn.1,2 (1986); *Kennebec Valley Television, Inc.*, 2 FCC Rcd 1240 (Rev. Bd. 1987).

5. *Fremont*. As a general rule, an applicant can avoid comparative attribution of its existing mass media ownership interests if, before the "B cut-off date in the subject proceeding, it affirmatively pledges to divest those existing media interests upon grant of its instant application. *Washington's Christian Television Outreach, Inc.*, 59 RR 2d 787, 790 (1985), *recon. denied*, 59 RR 2d 1679 (1986), *aff'd by judgment*, No. 85-1649 (D.C. Cir. Dec. 17, 1987); *see also Santee Cooper Broadcasting Co.*, 99 FCC 2d 781, 794-796 (Rev. Bd. 1984), *aff'd in principal part sub nom. Women's Broadcasting Coalition, Inc.*, 59 RR 2d 730, 734 (1986), *aff'd by judgment sub nom. Plantation Broadcasting Corp. v. FCC*, Case No. 86-1060 (D.C. Cir., March 17, 1987). Without such a timely divestiture pledge, even an actual divestiture made after the "B" cut-off date must be disregarded for comparative purposes in order to prevent the unfairness to competing applicants that would come of "comparative upgrading." *See Daytona Broadcasting Co., Inc.*, 97 FCC 2d 212, 215-219, 223 (Rev. Bd. 1984), *aff'd in pertinent part*, 101 FCC 2d 1010, 1012-1013 (1985), *modified*, FCC 86-182, released April 18, 1986. As we observed in *Daytona Broadcasting:*

> Ever since the Supreme Court's landmark decision in *Ashbacker* affording consolidated comparative hearing rights to mutually-exclusive applicants for limited radio spectrum space, the bar against comparative "upgrading" after the expiration of a predetermined date has become an integral component of the multi-leveled competitive licensing process. First, the bar against "upgrading" is indispensable to the assurance of full and fair notice to (actual or potential) competing applicants of the make-up and the potential strength of the proposals of a mutually-exclusive adversary. Broadcast licenses are awarded on the basis of relative competitive merit in accordance with the criteria set forth in the Commission's comparative *Policy Statement* . . . and, to e blunt, comparative licensing proceedings conducted under the *Policy Statement* are far too exhaustive and expensive to allow an applicant to be drawn deeply into a competition for the license, only to be confronted by a competitor whose comparative position has been improved *post hoc* by decisionally significant changes in its ownership structure or its broadcast proposals. In short, the long-standing bar against "upgrading" an application after a predetermined deadline is imperative to prevent the comparative licensing process from becoming an extravagant analogue of "Blindman's "B[l]uff".

97 FCC 2d at 216 (footnote omitted). Here, it is undisputed that the pledges of Fremont's stockholders to divest their ownership interests in Station KREL-AM came considerably after the "B" cut-off deadline (April 29, 1983) set in this case, Fremont Br. at 25, and neither the unusual three-and-one-half year period from the "B" cut-off date until hearing designation nor the absence of a specific divestiture commitment question in the FCC Application Form (Form 301) may validly enable Fremont to receive comparative recognition of its very untimely divestiture pledge. Were it otherwise, Fremont's competitors here, who may well have premised their own comparative cases on Fremont's heavily burdened "diversification" status as of the "B" cut-off deadline, would be prejudiced impermissibly.[1]

6. We also reject Fremont's claim that its untimely divestiture should be recognized under the Commission's new "AM-daytime preference policy. In *FM Broadcast Assignments*, the Commission specifically limited the applicability of this new policy to daytime-only licensees who apply for new FM channels *in their community of license*, 59 RR 2d at 1228-1229, and who have operated the daytime-only station for three continuous years prior to filing an application for the FM channel. *Id.*, at 1230. Fremont concedes (Br. at 23-25), as it must, that it meets none of these criteria: one, Consolidated Broadcasting Corporation is the licensee of KREL-AM, not Fremont, *I.D.*, para. 6; two, Fremont proposes Las Vegas as its community of license, whereas KREL-AM is located in Henderson, *see* Fremont Br. at 24; and three, "the principals of Fremont have not owned and operated [KREL-AM] for three years prior to the filing of the FM application." *Id.*, at 23. Therefore, the Commission's "AM-daytime preference policy" does not, by its clearest terms, apply to applicants in Fremont's posture.[2] Finally, we must disagree with Fremont's novel argument that the relatively high number of available communications services in the Las Vegas market substantially reduces the decisional significance of its ownership of KREL-AM. In affirming the award of a substantial preference against an applicant for a new FM station in Tucson, Arizona, a radio market equally well-served, we held:

> Long-standing precedent teaches that an applicant with no attributable ownership interests in the mass media is entitled to a substantial comparative preference under the diversification criterion over a competing applicant that already owns a broadcast station in the proposed community of license - despite the abundance of other media in the market - because it will provide a new voice . . . . The existence of the other media diminishes somewhat the weight accorded the diversification preference, but does not reduce the magnitude of the preference to less than "substantial.

Golden State Broadcasting Corp., 94 FCC 2d 212, 213 (Rev. Bd. 1983) (subsequent history omitted); *accord WFSP, Inc.*, 99 FCC 2d 444 (Rev. Bd. 1984). Accordingly, we affirm the ALJ's award of a strong diversification preference to Willson over Fremont.

7. *Ownership Integration With Management.* The Commission prescribes that the full-time participation in station management by owners is to be regarded as of substantial importance. *Policy Statement*, 1 FCC 2d at 395. The ALJ weighed the applicants' respective "integration" proposals, determined that Willson should receive 100% quantitative credit compared to 55% for Fremont and 0% for Martin, and concluded that "Willson is to be preferred over Fremont and Martin, while Fremont is preferred over Martin." *I. D.*, at para. 23. While Martin excepts to some of the ALJ's findings regarding the magnitude of "integration" credit it received below, it does not take issue with his basic finding that James E. Martin, Jr., Martin's proposed general manager, has committed to work full-time at the proposed station for only so long as necessary "to accomplish a good operating position," which Martin considers to be about one year. *I. D.*, para. 8. This particular ALJ finding is beyond appeal before the Board. *See* 47 CFR § 1.277(a) (Any objection [to an *I.D.*] not saved by exception . . . is waived.). Because the *Policy Statement* declares that credit is to be awarded for "integration" proposals that are to "be adhered to on a permanent basis," 1 FCC 2d at 395 n.6, the ALJ appropriately awarded Martin no relevant credit. *See Cuban - American Ltd.*, FCC Rcd 3264, 3268 (Rev. Bd. 1987); *Signal Ministries, Inc.*, 104 FCC 2d 1481, 1497 n.16 (Rev. Bd. 1986), *review denied*, 2 FCC Rcd 1259 (1987). Also, we deny as contrary to precedent Fremont's exception that its allegedly superior "qualitative" enhancements outweigh, or at least neutralize, Willson's 100% to 55% quantitative advantage. The Commission has held that "it is well established that qualitative attributes . . . may enhance the value of an integration proposal but cannot overcome clear quantitative differences. *Horne Industries, Inc.*, 98 FCC 2d 601, 604 n.12 (1984) (citing *Alexander S. Klein, Jr.*, 86 FCC 2d 423, 428-29 (1981); Van Buren Community Service Broadcasting, Inc., 87 FCC 2d 1018, 1022 (Rev. Bd. 1981)). [3] Likewise, we deny Fremont's further exception (Br. at 16-19) that the past broadcast experience and performance of Fremont principals in the Las Vegas market outweigh Willson's quantitative integration advantage. Broadcast experience is but one qualitative enhancement factor and therefore, as indicated *supra*, cannot overcome the quantitative "integration" difference present here. To the extent Fremont seeks separate credit for "past broadcast record," see Policy Statement, 1 FCC 2d at 398, its effort must be rejected for failure to make the requisite threshold showing before the ALJ that such performance was "unusually good." *See* Gilbert Group, Inc., 49 RR 2d 1081 (1981). Accordingly, we affirm the ALJ's award of an ownership "integration preference to Willson over Fremont, *see Vacationland Broadcasting Co., Inc.*, 97 FCC 2d 485, 495 (Rev. Bd. 1984) (subsequent history omittted), as well as his award of a substantial "integration" preference to Willson over Martin.

8. Conclusion. Willson enjoys slight diversification and substantial integration preferences over Martin, which has no countervailing preferences over Willson. Willson further enjoys substantial diversification and moderate integration preferences over Fremont, which in turn outweigh Fremont's preference for its proposed specialized (Spanish-language) program service, *see I.D.*, paras. 15-17, 24-25. [4] In sum, a grant of the Willson application will best serve the Commission objective set forth in the Policy Statement.

9. ACCORDINGLY, IT IS ORDERED, That the unopposed petitions for leave to amend filed on October 19, December 4, 1987, and January 27, 1988 by Martin Intermart, Inc. and filed on February 8, 1988 by Fremont Broadcasting Corporation ARE GRANTED, and the amendments ARE ACCEPTED;

10. IT IS FURTHER ORDERED, That the "Contingent Request for Certification of Issues" filed on October 30, 1987 by Fremont Broadcasting Corporation IS DENIED; and

11. IT IS FURTHER ORDERED, That the application of Gary E. Willson (File No. BPH-821021AI) for a construction permit to establish a new FM broadcast station at Paradise, Nevada IS GRANTED; and that the applications of Martin Intermart, Inc. (File No. BPH-821020AP) and Fremont Broadcasting Corporation (File No. BPH-821021AP) ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

FOOTNOTES

[1] At oral argument, the Board candidly recognized that, over time, a combination of the Commission's policies and successive adjudications have yielded several differing "deadlines" for the freezing of disparate elements of an applicant's basic comparative proposal. For example, significant engineering changes may not be made after the "B" cut-off date, absent a "good cause" showing. 47 CFR § 73.3522(a)(2), (b). The same is generally true for minor ownership changes. *See* 47 CFR 73.3571(j)(2), 73.3572(b), 73.3573(b). And, as in this case, for media divestiture pledges as well. Women's Broadcasting Coalition, *supra*. However, although a comparative applicant's ownership "integration" proposal is frequently dispositive, our case precedent has allowed to be established a much later date - v iz., the hearing exhibit exchange date - as the deadline for the submission of an applicant's comparative "integration" proposal. *See, e.g., Northland Communications*, 100 FCC 2d 914, 915-918 (Rev. Bd. 1985), aff'd, 60 RR 2d 776, 777 n.3 (1986), *aff'd by judgment sub nom. Up North Broadcasting Co. v. FCC*, No. 86-1218 (D.C. Cir. April 2, 1987). In consequence, we are confronted in the case at bar with an anomalous and, in

our view, logically unsatisfactory situation. That is, Willson is here to be fully credited with an "integration" proposal submitted on December 12, 1986, some 3 1/2 years *after* the "B" cut-off date *(i.e.,* April 29, 1983) in this proceeding, while Fremont is downgraded with a "constructive" media interest of equally critical comparative impact, although Fremont's media divestiture pledge was apparently made approximately 1 month earlier *(i.e.,* on November 6, 1986) than Willson's corresponding "integration pledge. To compound the asymmetry, Willson - *after* the (April 1983) "B" cut-off date in the instant Las Vegas proceeding - then filed an application for a new TV station in Tampa, Florida, proposing there to "integrate" fulltime as general manager of that Tampa TV station. Tr. 164-165, 169-170. It was not until September 1985 that Willson withdrew his Tampa application (and his Tampa "integration" pledge). Gary W. Willson, Order, FCC 85M-3582, released September 13, 1985. Thus, for more than 2 years after the "B" cut-off date here, Willson evinced an intent not to "integrate" into this Las Vegas station; yet - by dint of the case law - Willson's current "integration pledge is legally valid in the instant case while Fremont's earlier pledge to divest its conflicting media interest is not cognizable for comparative purposes.

Though it is true that the parties in this case were fully aware of the different legal "deadlines" at play here and Fremont thus cannot claim surprise or procedural prejudice (indeed, Fremont has lodged no exceptions on this point), we nonetheless respectfully suggest that the situation needs remedial Commission attention. We strongly urge that the Commission consider the establishment of a single, finite "deadline" for submissions of an applicant's entire comparative proposal. Whether that "deadline" should be at application filing, or on the more liberal "B" cut-off date, is for the Commission to choose. However, at a minimum, and as has been suggested previously, comparative "proposals [must] not [be] susceptible to later upgrading, shading, and endless litigative debate." *Voce Intersectario Verdad America, Inc.,* 100 FCC 2d 1607, 1619 n.2 (Rev. Bd. 1985) (separate statement suggesting that "integration" proposals be contained in the initial application).

[2] For identical reasons, we must deny Fremont's exception seeking an "AM-daytime preference" for its principals' involvement at KREL-AM.

[3] The Board had previously commented in dictum on the practice of placing a priority emphasis upon any quantitative (percentage) differences in "integration" proposals where the majority of equity holders *(i.e.,* those holding more than 50% of the voting stock) are all to be "integrated" into station management, and it had suggested that, in such circumstances, the Commission might wish to consider shifting its focus to the qualitative distinctions *(e.g.,* local residence, past broadcast experience, etc.) that separate the applicants. *See Cannon Communications Corp.,* 101 FCC 2d 169, 181 (Rev. Bd. 1985). However, upon review of that case, the Commission left undisturbed the *Horne Industries formulation (see* text para. 7), which makes quantitative differences paramount. *See* FCC 86-244, released May 15, 1986, *appeals pending sub nom. HBZ Communications, Inc. v. FCC,* No. 86-1347 (D.C. Cir). Consequently, the *Horne Industries* formulation remains controlling.

[4] In light of our ultimate conclusion herein, Willson's contingent exception to Fremont's "program service" preference is wholly moot.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: March 11, 1988

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON ALASCOM'S PETITON FOR DECLARATORY RULING REGARDING JURISDICTIONAL NATURE OF CERTAIN PRIVATE LINES

On March 1, 1988, Alascom, Inc. (Alascom) filed a Petition for Declaratory Ruling for clarification of jurisdictional issues relating to the provision of certain 1.544 Mbps private line services between Juneau and Anchorage, Alaska. Alascom's petition for a ruling relates to a recent Request for Proposal (RFP), Document 000006, issued by the State of Alaska (State).

Alascom states that the RFP is for 1.544 Mbps interstate facilities to replace an existing full-duplex data service connnecting state offices located in Juneau and Anchorage. The principal uses of the requested facilities will be the transfer of data and associated administrative communications between the two cities. Alascom has provided this service on an intrastate basis to the State for over 18 months. According to Alascom, the State has indicated that the facilities in question will be connected with an interstate tie line. However, contrary to the State's conclusion, Alascom believes that the State's proposed use of the 1.544 Mpbs private line facilities should be considered to be exclusively intrastate, and it asks the Commission to rule on this issue.

Specifically, Alascom requests rulings that (1) the 1.544 Mbps facilities at issue are intrastate facilities; (2) the Commission's authority pursuant to Titles II and III of the Communications Act does not preempt the Alaska Public Utilities Commission's (APUC's) jurisdiction over entry regulation; and (3) in the event the facilities at issue are found to be mixed-use facilities, that the interstate and intrastate elements are severable for rate regulation purposes. Alascom also requests that the Commission provide an appropriate basis for determining tariff charges, if any, for the interstate communications.

Interested parties are to file comments on this petition by *April 11, 1988*, and reply comments by *April 26, 1988*, with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. An original and five copies are to be filed with the Secretary. A copy should also be sent to Claudia Pabo, Policy and Program Planning Division, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public records duplication, International Transcription Services, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of Alascom's Petition can be obtained from ITS, at (202) 857-3800.

For further information, contact Claudia Pabo, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-4047.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 85-171

In the Matter of

Technical Flexibility in the
Mobile Communications Services,
Rules Parts 2, 22, 74, and 90.

FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: February 25, 1988; Released: March 22, 1988

By the Commission:

INTRODUCTION

1. By this action, the Commission seeks further comment and information on a proposed equipment testing and authorization procedure for land mobile transmitters, called alternative type acceptance (ATA). The principal goal of this proceeding is to encourage the introduction of new equipment and technology into existing land mobile radio bands in the most efficient manner. To accomplish this goal, adoption of the proposed rules would eliminate the need for lengthy rule making proceedings that are presently required to establish new technical standards. In addition, an applicant does not have to reveal the technical details of proposed equipment as would occur in a rule making proceeding. This confidentiality may be a significant factor in obtaining venture capital for the development of new technologies.

BACKGROUND

2. On May 31, 1985, the Commission adopted a *Notice of Inquiry and Proposed Rule Making* (*Notice*) in this proceeding.[1] In this *Notice*, the Commission proposed establishing an equipment testing and authorization procedure, called ATA, for transmitters that did not meet existing land mobile technical requirements. The ATA procedure would allow the use of new technology without the need for lengthy rule making. In addition, applicants for equipment authorization would not have to reveal the technical details of their proposed equipment as they would in a rule making proceeding. The ATA procedure would ensure that such new technology would not cause more interference than equipment that met the existing land mobile technical requirements.

3. Under the present procedure, accommodation of new technology necessitates amendment of appropriate rules through a rule making procedure. In order to give adequate background for the rule making, the applicant must provide full supporting documentation and explanation of the technology, that is then made available to the public. This may expose concepts or other information that the applicant might wish to remain proprietary. Under the ATA methodology originally proposed in the *Notice*, the manufacturer or distributor of the equipment employing new technology would be required to perform specific tests to determine its interference potential to the FM land mobile service. The characteristics of a "standard" FM Notice along with specific test methodology to determine the interference potential of the new technology equipment. This test methodology would determine a "power derating factor." The power derating factor would determine the transmitter output power that would be permitted under the ATA procedure to ensure that the new equipment did not cause more interference than conventional FM transmitting equipment.[2] The results of these tests would be included in the equipment authorization application and would be reviewed by the Commission.

4. Eight parties filed comments in response to the *Notice*. The commenters supported the ATA concept. They believed that such a procedure would be beneficial and could foster the introduction of more efficient radio equipment. At the same time, however, the commenters indicated that the ATA proposal did present a number of technical and operational problems. Commenters cited technical problems with realizing a standard test receiver, problems with determining an appropriate modulating signal for the equipment under test, and problems associated with using the proposed SINAD ratio.[3] Commenters also cited operational problems in coordinating frequencies for systems using ATA equipment.

DISCUSSION

5. The comments support the concept of ATA, and we are convinced that it has considerable merit. We do find, however, that the commenters have raised some valid concerns with regard to our proposed test methodology and frequency coordination. Therefore, we are proposing a different methodology for ATA that we believe addresses the technical and operational concerns raised.

6. The original ATA proposal was based on developing a model for a standard receiver. The standard receiver would be used to gauge the interference potential of the new equipment and to develop the power derating factor. However, as pointed out by the commenters, receiving equipment designers make a number of design trade-offs. For example, some of the factors that are taken into account are receiver bandwidth, sensitivity and selectivity. Since receiver designs have generally not been subject to Commission regulation, designers have taken a number of approaches to the problem of receiver designs. Accordingly, the choice of a standard receiver that does not unfairly prejudice any existing equipment and still provides the benefits of the ATA procedure becomes very difficult.

7. We are therefore modifying our original ATA proposal to use a methodology based on transmitter characteristics rather than standard receiver characteristics. This methodology compares the characteristics of a transmitter or multiple collocated transmitters using new technology to the characteristics of a conventional FM land mobile transmitter. The transmitter characteristics of FM land mobile equipment are well known and have been regulated by the Commission for many years. This new ATA approach is premised on the fact that if the key technical parameters of the transmitted signals (such as bandwidth and power) are controlled appropriately, the interference potential of an ATA-type transmitter or mul-

tiple collocated transmitters should be no greater than the interference potential of a conventional FM transmitter. While this new methodology limits usable bandwidth more than our original proposal and thus restricts somewhat the possible technologies that may take advantage of ATA, we believe that ATA will be extremely valuable for the introduction of new technology. There are still considerable benefits to be gained under this new ATA proposal.

8. We believe that this modified procedure will eliminate the frequency coordination problems raised previously by the commenters. Frequency coordination of ATA equipment will require no more effort than a conventional FM transmitter with equivalent transmitted power. In order to keep the coordination process simple for multiple transmitters in the same FM channel, we are requiring that such transmitters be collocated.

ALTERNATIVE TYPE ACCEPTANCE TESTING

9. All existing administrative procedures and other requirements for equipment authorization remain in effect. With the exception of the test procedure described below, type acceptance for equipment under the ATA procedure will be the same as for conventional FM land mobile equipment.

10. The proposed ATA test procedure will require that emissions fit under a "spectrum signature mask."[4] A spectrum signature is defined as an amplitude versus frequency display of a signal. A "mask" is a graphic approximation of such a spectrum signature. Figure 1 of Appendix A shows the "ATA mask." The shape of the mask was generated using an FM signal modulated with a 1.5 kHz bandwidth Gaussian noise source. This provides a good approximation to voice-modulated signals as observed off-the-air.

11. The spectrum signature of the equipment under test is measured with a spectrum analyzer. The spectrum analyzer's resolution bandwidth is set to 300 Hz, its video bandwidth is set to 30 Hz, and its display is set to hold peak amplitudes of the input signal(s). The emissions from the transmitter or multiple collocated transmitters shall be shown to be contained within the mask. The transmitter(s) shall be modulated so as to display maximum operational amplitudes and bandwidth.

12. The maximum emission from the transmitter, or each transmitter in the case of multiple collocated transmitters, is used to determine the derating relative to the ATA mask. This derating is the difference in decibels between the amplitude of the ATA mask at its center and the maximum emission from each transmitter.[5] The ATA grant will indicate the number of Minuiple collocated transmitters permitted in an FM land mobile channel. Comments are invited about the derivation and methodology of the ATA mask.

13. The total average power of the applicant's transmitter(s) is measured with a power meter. The combined power cannot exceed the power allowed for an equivalent FM transmitter. As required for determining the derating, the transmitter(s) shall be modulated so as to display maximum operational amplitudes and bandwidth. We solicit comments about the measurement and derating of transmitter power.

14. The ATA test procedure utilizes specific spectrum analyzer and power meter characteristics. We recognize that test instruments with these characteristics may not be owned by some applicants. However, such equipment is readily available at equipment rental companies and is relatively easy to use. Tests with the instruments as described are believed to be sufficient for the purposes of ATA. For example, the specified spectrum analyzer settings depict emission bandwidth satisfactorily for a wide range of signal types. These settings, however, do not represent the power of complex emissions in an FM receiver's passband, hence the requirement for measurement of power with a meter that measures the average power of complex emissions.

15. With the showing of conformance to the ATA mask and the limitation of total average power, the applicant may omit showing compliance with Sections 2.985 (Measurements required: RF power output) and 2.989 (Measurements required: Occupied bandwidth) of the Rules and proceed to the other requirements for type acceptance. Comments are invited about the adequacy of the ATA showings for the protection of existing licensees.

16. From a type acceptance applicant's perspective, the ATA test procedure focuses only on transmitter characteristics. The applicant does not have to determine effects of his equipment on FM receivers. The FCC Laboratory used FM receivers to compare FM interference with interference from ATA-type signals. A variety of simulated ATA-type signals were employed such as noise and tone modulated double sideband suppressed carrier, and noise modulated amplitude compandored single sideband. On the basis of the interference tests, described in Appendix B, we are confident that this new approach will ensure that equipment approved under the ATA procedure does not cause more interference than existing FM equipment.

ELIGIBILITY

17. Except as noted below, we propose that permission to use ATA equipment be given to: 1) licensees in the Public Mobile Service 2) Broadcast Remote Pickup licensees; and 3) Private Land Mobile Radio Service licensees (Part 90). ATA users would receive protection as if they were conventional FM land mobile radio licensees. However, we do not propose to relieve ATA users of compliance with existing operating regulations of these services. For example, ATA users would remain subject to existing requirements, such as those in Sections 90.173 (a)(b), 90.233 (a) and 90.403 (e), to cooperate in avoiding interference in the use of shared channels.

18. We are not proposing ATA for the Domestic Public Cellular Radio Telecommunications Service, for Personal Radio Services (Part 95), or for land mobile frequencies shared with UHF television. The engineering model used to develop ATA appears inadequate for authorization of advanced technology transmitters in cellular radio. It does not take into account technical factors occurring in the cellular environment. These factors include automatic power adjustment of mobile units, handoff of mobiles from one cell to another, and control signalling. However, the Commission recently issued a proposal in General Docket No. 87-390 to permit alternative technologies to be introduced in the cellular service based on a detailed interference study as required by Section 22.903 (c) of the Rules.[6] Type acceptance would not be required in such instances. We are inviting comments in this item as to whether ATA could be made applicable to cellular in order to reduce the need for separate analyses.

19. We also are not proposing ATA for Personal Radio Services (Part 95) due to concern about interference in this service. With respect to use of ATA transmitters on shared UHF television channels, there is a possibility that equipment authorized under ATA would cause more interference to television than would FM land mobile radio.

PROCEDURAL MATTERS

20. In view of the foregoing and pursuant to Sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 154(j) and 303(r), it is proposed to amend Parts 2, 22, 74, and 90 as set forth in the APPENDIX A below.

21. In accordance with the procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before **June 20, 1988,** and reply comments on or before **July 20, 1988.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, providing that such information or a writing indicating the nature and source of such information is placed in the public files, and provided that the fact of the Commission's reliance on such information is noted in the *Report and Order*.

22. In accordance with the provisions of Section 1.419 of the Commission's Rules, formal participants shall file an original and five (5) copies of their comments and other materials. Participants wishing each Commissioner to have a copy of their comments should file an original and ten (10) copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All comments should be clearly marked General Docket No. 85-171, and will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters at 1919 M Street, N.W., Washington, D.C. All written comments should be sent to: Secretary, Federal Communications Commission, Washington, D.C., 20554. For general information on how to file comments, please contact the FCC Consumer Assistance and Small Business Division at (202) 632-7000.

23. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* Section 1.1206(a). The Sunshine Agenda period is the period of time that commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

24. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. Section 1.1206.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

25. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. Section 603, the Commission's initial analysis is as follows:

I. Need and purpose of this action:

The Commission believes that its rules and policies should be reviewed in the context of current social, technological, and financial environments in which licensees and applicants operate, so that service to the public may be facilitated while the least regulatory cost is imposed. It is in this light that it is considering modification of its rules, Parts 2, 22, 74, and 90.

II. The objectives:

The Commission proposes to accommodate new mobile radio technology systems by reducing regulation to the maximum extent feasible. The Commission believes that such action will lead to a more rapid development of mobile radio technology.

III. Legal basis:

Action proposed herein is taken pursuant to Section 4(i) and 303 of the Communications Act of 1934, as amended.

IV. Description, potential impact and number of small entities affected:

We do not believe that this *Further Notice* will have a detrimental impact upon small entities in light of steps we have taken to control interference. Operation of current licensees should not be affected. Indeed, insofar as our action permits new technology, it is likely that it will benefit all licensees whether small or large, because it will provide them with additional equipment and services that seek to enter the new markets that this action will create. Also, since the action is deregulatory in nature, it should provide expanded business opportunities for all vendors and users of communications equipment, both small and large. Beyond this, we are unable to quantify the potential effects of this action on small entities. Comments are requested on this point by interested parties.

V. Recording, record keeping and other compliance requirements:

The proposed modifications to Part 2 of the Rules would require only record generation by the manufacturer sufficient to meet type acceptance standards for the equipment. The option of using existing procedures is retained.

VI. Federal rules which overlap, duplicate or conflict with this rule:

None.

VII. Any significant alternatives minimizing impact on small entities and consistent with the stated objective:

None.

PAPERWORK REDUCTION ACT STATEMENT

26. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a modified information collection requirement on the public. Implementation of a modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

27. For further information on this proceeding contact Hector Davis, FCC Laboratory, Office of Engineering and Technology, 7435 Oakland Mills Road, Columbia, Maryland 21046, (301) 725-1585.

FEDERAL COMMUNICATONS COMMISSION

H. Walker Feaster III
Acting Secretary

APPENDIX A

PROPOSED CHANGES FOR FCC RULES AND REGULATIONS

PARTS 2, 22, 74, and 90

1. In 47 CFR Part 2, Subpart J - Equipment Authorization Procedures, Section 2.990 is proposed to be added to read as follows:

Section 2.990 Alternative type acceptance (ATA) grant.

(a) In lieu of the measurements required in Sections 2.985 and 2.989 of this part, an applicant may elect to apply for an equipment authorization grant under alternative type acceptance (ATA) as contained in this section. ATA is intended as an expeditious alternative for applicants who wish to market new mobile radio transmitter technologies that will coexist with conventional FM land mobile systems in the land mobile bands. Under ATA, licensees have an option to use new technologies with the understanding that their transmitter power has been derated in order to prevent interference to other licensees. Note that an applicant electing to use ATA shall comply with the other requirements for type acceptance.

(b) An applicant for an ATA grant shall derate the emissions of the proposed equipment compared to the transmitter power allowed for conventional FM land mobile radio equipment. The proposed equipment may consist of multiple collocated transmitters in an FM land mobile channel.

(c) The applicant shall perform the following tests in order to determine the derating with respect to the transmitter power permitted for conventional FM land mobile radio equipment:

(1) The operating conditions for the transmitter or multiple collocated transmitters under test are established so that the maximum bandwidth in channel is displayed. These conditions include modulation, all transmitters operating, all hopping frequencies shown, pulsed operation shown. This bandwidth shall be contained within the ATA mask defined as the following straight line approximation of a conventional FM emission (*See* Figure 1.):

Frequency Rel. to Center of Channel	Amplitude
<-35 kHz	-70 dB
-25 kHz	-70 dB
-25 kHz	-60 dB
-11 kHz	-60 dB
-4 kHz	-7 dB
0 kHz	0 dB
+4 kHz	-7 dB
+11 kHz	-60 dB
+25 kHz	-60 dB
+25 kHz	-70 dB
>+35 kHz	-70 dB

The measurements shall be made with a spectrum analyzer with the following settings: 300 Hz resolution bandwidth, 30 Hz video bandwidth, and peak hold. The maximum emission from the transmitter or each transmitter in the case of multiple collocated transmitters shall be plotted so as to touch the ATA mask. The derating of each transmitter is the amplitude of its maximum emission relative to 0 dB at the center frequency of the ATA mask.

(2) The power of the transmitter(s) is measured to assure that the combined power is no greater than the allowable FM transmitter power. A power meter that measures average power shall be used. The transmitter(s) shall be modulated and operated as described for determining the derating. No adjustments for duty cycle will be made. Therefore 100% duty cycle will be required for the purposes of this test.

(d) The applicant for ATA shall submit a description of the above test results with his application, including a graph showing the ATA mask with the emissions from the transmitter(s).

(e) The Commission staff will review the application and may request the applicant to furnish a representative transmitter(s) in order to reproduce the tests. If the equipment meets the basic requirements it will be type accepted under an ATA grant, that specifies the transmitter(s) power as derated for the grant.

2. In 47 CFR Part 22, Subpart C - Technical Standards, Section 22.120 is proposed to be amended to add paragraph (e) to read as follows:

Section 22.120 Type acceptance of transmitters.

* * * * *

(e) In addition to type accepted transmitters employing conventional modulation, a licensee of a land mobile radio channel, except those in the Cellular Radiotelephone Service and those in shared UHF television channel, may use transmitters granted alternative type acceptance (ATA) under Section 2.990. These transmitters will be licensed on channels where authorized bandwidths of 25 kHz or greater are allowed. Sections 22.507 and 22.508 do not apply to these transmitters.

3. In 47 CFR Part 74, Subpart D - Remote Pickup Broadcast Stations, Section 74.451(a) is proposed to be revised to read as follows:

Section 74.451 Type acceptance of equipment.

(a) Applications for new remote pickup broadcast stations or systems or for changing transmitting equipment of an existing station will not be accepted unless the transmitters to be used have been type accepted by the FCC pursuant to the provisions of this subpart, or have been type accepted for licensing under Parts 21 or 90 of the FCC rules and do not exceed the output power limits specified in 74.461(b), or have been granted alternative type acceptance (ATA) under Section 2.990. In addition to the requirement to maintain the power derating established for the ATA grant, a licensee will be required to operate in accordance with the limits given in 74.461(b). Subsection 74.461(a) and Section 74.462 do not apply to transmitters granted ATA. These transmitters will be licensed on channels where authorized bandwidths of 25 kHz or greater are allowed.

* * * * *

4. In 47 CFR Part 90, Subpart I - General Technical Standards, Section 90.203(a) is proposed to be revised to read as follows:

Section 90.203 Type acceptance required.

(a) Except as specified in paragraph (b) of this section, each transmitter utilized for operation under this part and each transmitter marketed as set forth in Section 2.803 of Part 2 shall be of a type that is included in the Commission's current Radio Equipment List as type accepted for use under this part; or, be of a type that has been type accepted by the Commission for use under this part in accordance with the procedures in paragraph (a)(2) of this section, or be of a type that has been granted alternative type acceptance (ATA) under Section 2.990. (*See* also Section 90.217.) ATA equipment will not be permitted in a shared UHF television channel.

* * * * *

5. In 47 CFR Part 90, Subpart I - General Technical Standards, Section 90.217 is proposed to be amended to designate the existing language as paragraph (a) and add new paragraph (b) to read as follows:

Section 90.217 Exemption from technical standards.

(a) * * *

(b) Transmitters authorized under alternative type acceptance (ATA), Section 2.990, are exempt from the restrictions on types of emissions and bandwidth limitations set out in this subpart. Such transmitters may not operate in the continuous carrier transmit mode. They will be licensed on channels where authorized bandwidths of 25 kHz or greater are allowed.

6. In 47 CFR Part 90, Subpart J - Non-Voice and Other Specialized Operations, Section 90.231 is proposed to be amended to add the following sentences:

Section 90.231 Scope.

* * * * *

Transmitters authorized under alternative type acceptance (ATA), Section 2.990, are exempt from the restrictions on types of emissions set out in this subpart. Such transmitters may not operate in the continuous carrier transmit mode. ATA equipment will not be permitted in a shared UHF television channel, or in fixed or telemetry services.

APPENDIX B

COMPARISONS OF FM INTERFERENCE WITH INTERFERENCE FROM ATA - TYPE SIGNALS

1. Two typical FM land mobile receivers were used for comparisons of FM interference with interference from ATA-type signals. One receiver was a relatively inexpensive FM transceiver, while the other was a more expensive base station transceiver. These receivers were tested with several emission combinations typifying transmitters that might be authorized under ATA.

2. The tests were based on procedures for adjacent channel selectivity given in Electronic Industries Association Standard RS-204-C, January 1982. First, the reference sensitivity of the receiver under test was determined. This is the tuned signal level resulting in a 12 dB SINAD. Then, the level of the tuned desired signal was increased 3 dB, resulting in an improvement (increase) of the standard 12 dB SINAD. Next, the level of an interfering undesired cochannel FM signal was found that decreased the SINAD to 12 dB again. (The modulations of the desired and undesired FM signals were found from the EIA Standard, 1 kHz at 3 kHz deviation and 400 Hz at 3 kHz deviation, respectively.)

3. The undesired cochannel FM signal was replaced by a simulated cochannel ATA-type signal, derated with respect to the previously measured undesired cochannel FM by

using the proposed ATA mask and power measurement. If the resulting receiver SINAD was 12 dB or more, ATA was judged to be satisfactory, resulting in "no more harm" than the undesired FM signal.

4. The two FM receivers were tested with the following ATA-type signal configurations:

Two carriers with center frequencies at the channel center frequency plus or minus 1.5 kHz, each double sideband suppressed carrier amplitude modulated with 1.5 kHz bandwidth Gaussian noise.

One of the above signals, centered in the channel.

Two carriers, one centered in the channel, one at the center frequency less 1 kHz, both double sideband suppressed carrier amplitude modulated with 400 Hz.

One of the above signals, centered in the channel.

Two amplitude compandored single sideband transmitters with their center frequencies at plus and minus 2.5 kHz with respect to the center frequency of the FM channel and modulated with 1.5 kHz bandwidth Gaussian noise.

5. For each of the above configurations, a SINAD of 12 dB or higher was measured validating ATA. In general, the higher the SINAD ratio is, the better is the quality of a communications channel. Note that the use of a 12 dB SINAD for the purposes of evaluating ATA was only relative. It was used as a reference point for comparing the effects of an interfering undesired cochannel FM signal with those of an interfering undesired cochannel ATA-type signal. In practice, a 12 dB SINAD due to interference from an ATA-type signal should be no more likely than a 12 dB SINAD due to an interfering FM signal.

6. According to the laboratory tests, interference from ATA-type signals is relatively independent of the characteristics of individual receivers typical to the FM land mobile service. The skirts of the ATA mask are intended to preclude slope detection of signals that might otherwise be outside of a receiver's passband.

FOOTNOTES

[1] *See Notice of Inquiry and Proposed Rule Making*, General Docket No. 85-171; 50 FR 25274, June 18, 1985.

[2] For example, the ATA test procedure could be used to permit multiple channel narrow band equipment to operate within a conventional land mobile channel. Since conventional land mobile systems operate with 25 kHz channel spacing and frequency modulation, it might be possible to operate multiple channel narrow band equipment, such as 5 kHz amplitude compandored single sideband (ACSSB) equipment in an FM channel, without causing additional cochannel or adjacent channel interference. This would be accomplished by attenuating or reducing the power in some or all of the 5 kHz channels. The amount of attenuation would represent the power derating factor and, theoretically, the multiple 5 kHz channels would represent the equivalent interference potential of a conventional 25 kHz FM channel transmission.

[3] SINAD is a ratio of signal plus noise and distortion to noise and distortion. SINAD is defined in Electronics Industries Association Standard RS-204-C, January 1982, p. 3.

[4] We are proposing to limit the applicability of ATA to those land mobile channels where the channel bandwidth is 25 kHz or greater, including 25 kHz FM channels at a center frequency spacing of 12.5 kHz. While the ATA concept is applicable for FM channels less than 25 kHz in bandwidth, the present proposal was developed and tested assuming a channel bandwidth of 25 kHz. It is applicable to channels of 25 kHz bandwidth and wider. Interference could be expected if it were employed for narrower channels, since the emissions within adjacent channels may be excessive. However, appropriate conditions for ATA could be developed for such channels. This development may follow successful implementationof the present proposal.

[5] As an example, let us assume an applicant chooses to implement two transmitters with their peak emissions at plus and minus 4 kHz from the center of the channel. To ensure that the transmitters comply with the frequency roll-off characteristic of the ATA mask, each transmitter should be reduced in power by 7 dB, as required by the mask. Therefore, for the typical case of an FM transmitter with a power of 17 dBW, each of the applicant's transmitters should be attenuated so that they do not exceed 10 dBW. Be aware that the applicant may have to reduce the combined power of the two transmitters an additional amount to ensure compliance with the combined power requirement discussed in paragraph 13.

[6] *See Notice* of Proposed Rule Making, General Docket No. 87-390; 2nd FCC Rcd 6244 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-144

In the Matter of

Review of Technical Parameters
for FM Allocation Rules of Part 73,
Subpart B, FM Broadcast Stations

FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: March 1, 1988; Released: March 22, 1988

By the Commission:

INTRODUCTION

1. The Commission herein gives further notice of its proposal in the above-captioned matter to amend Part 73 of its Rules governing the FM Broadcast Service. Specifically, we propose to adjust our domestic intermediate frequency (IF)[1] distance separation requirements[2] to provide a uniform level of protection from IF interference. [3] The current requirements provide different levels of protection depending on the classification of the stations involved. However, there is no technical justification for this disparate treatment. Thus we propose here new requirements that we believe constitute a reasonable standard yet continue to preclude channel allocations and station assignments likely to cause interference. The revised separation distances would also provide for increased flexibility in antenna site selection for most classes of FM stations. Therefore, we believe that the adoption of these requirements would further our objective of promoting efficiency in the allocation, licensing, and use of the electromagnetic spectrum.

BACKGROUND

2. The Commission issued a *Notice of Proposed Rule Making* (*Notice*) [4] in this docket in April 1986. In this *Notice*, we proposed to reduce IF distance separation requirements for the additional FM station classes we created in BC Docket 80-90.[5] Our proposal specified distances for the Docket 80-90 station classes that would provide a level of protection comparable to that provided by the requirements for the existing station classes. Because we are not aware of widespread IF interference problems, we reasoned that the IF distance separation requirements for the existing station classes are adequate in most cases. Also, we invited new test measurements and updated information about the extent of IF interference.

3. The record established thus far (in response to the *Notice)* is inconclusive with regard to the IF distance separation issue, neither clearly supporting nor opposing our proposal. We issued a *Second Report and Order* [6], in which we concluded that our adoption then of the separation distances proposed in the *Notice* for the new classes would have been premature. We stated our intention to issue this *Further Notice of Proposed Rule Making* (*Further Notice)* to develop a more complete and comprehensive record, enabling us to set an appropriate uniform standard for all station classes.

4. Recent tests of commercial FM broadcast receivers by our laboratory indicate that some models are indeed susceptible to IF interference while other models are relatively immune.[7] Although in some respects the laboratory test conditions may not be fully representative of actual conditions, we nevertheless believe that our methodology for determining the average IF interference susceptibility (within a specified confidence interval) of a sample receiver picked at random from the receiver population is statistically valid.[8] From the laboratory report, it appears that a minor overall relaxation in the protection level[9] may be feasible, depending on the trade-off between risk of increased interference and the opportunity for additional broadcast service.[10] However, the laboratory report also indicates that IF distance separation requirements continue to be useful in reducing the probability of IF interference and that a major reduction in the required distances would not be advisable at this time.

PROPOSAL

5. We are proposing to revise minimum IF distance separation requirements as set forth in Section 73.207 of our rules. The proposed distances (*see* Appendix) were calculated to prevent overlap of the predicted 36 mV/m (91 dBu) contours of IF-related stations, regardless of the station classes. This level of protection is equivalent to that provided by the least stringent of our current requirements.[11] The proposed distances are either the same as or less than those under the current rule.[12] We are not aware of any significant problems with this protection level in the past, which leads us to believe that no appreciable increase in IF interference would result from the proposed adjustments to these distances.[13]

6. We considered proposing distances based on a lesser protection level[14], in order to provide a measure of relaxation in the requirements for all classes of FM stations. This would offer some increase in flexibility in selecting transmitting sites. Receivers in general would still be protected, although to a lesser degree. However, the measurement data in the record at this time does not conclusively support the choice of one particular protection level over another solely on technical grounds. Therefore, we are proposing distances based on the least restrictive level (*i. e.* 36 mV/m) with which we have long-term experience. We welcome, however, data or test results, particularly from receiver manufacturers or organizations representing receiver manufacturers, which support or oppose on technical grounds, either the 36 mV/m level upon which our proposal is based or an alternative protection level.

7. We are also proposing, as was suggested in the comments, an additional distance separation requirement (comprising distances for each FM station class) for proposed allotments and assignments on FM Channel 253 (98.5 MHz) in the vicinity of an existing TV Channel 6 allotment or assignment, and vice versa.[15] This proposed additional requirement is also based on the 36 mV/m protection level. There are nationwide approximately 65 allotments each of TV Channel 6 and FM Channel 253, but probably only a few instances where the two are geographically close enough to each other to cause IF

interference on FM receivers. Although the same justification exists for this requirement as for the purely FM requirements, we are reluctant to introduce any new regulation in the absence of problems. We request information on any cases where proximity of TV Channel 6 and FM Channel 253 has caused IF interference problems. We also request comment as to whether this additional requirement is necessary.

8. We are not proposing changes to the international IF distance separation requirements in Tables B and C of § 73.207(b). These requirements are contained in the Mexican and Canadian agreements affecting FM stations near the borders.

COMMENT PROCEDURE

9. Under procedures set out in Section 1.415 of the rules and regulations, 47 CFR § 1.415, interested persons may file comments on or before **May 13, 1988,** and reply comments on or before **May 31, 1988.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in Report and Order.

10. In accordance with the provisions of Section 1.419 of the Rules and Regulations, 47 CFR § 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

EX PARTE CONSIDERATIONS

11. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* Section 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda, and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

12. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a memorandum to the Secretary (with a copy to the commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. Section 1.1206.

OTHER MATTERS

13. We have determined that Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) does not apply to this rule making proceeding because if promulgated, it will not have a significant economic impact on a substantial number of small entities. The Secretary shall cause a copy of this Notice to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat.1164, 50 U.S.C. § 602 *et seq.*)(1962).

14. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

15. IT IS PROPOSED, pursuant to authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303, That Part 73 of the Commission's Rules be AMENDED as set forth in the Appendix below.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III.
Acting Secretary

APPENDIX

It is proposed to amend 47 CFR Part 73 as follows:

1. The authority citation for Part 73 would continue to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.207 would be amended by revising TABLE A in paragraph (b)(1), and by adding a new paragraph (c). In TABLE A, the first three columns, entitled "Co-channel", "200 kHz", and "400/600 kHz" would remain unchanged. The fourth column, entitled "10.6/10.8 MHz", would be revised to read as follows:

§ 73. 207 Minimum distance separation between stations.

* * * * *

(b) * * *

(1) * * *

TABLE A - MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS (MILES)

Relation	10.8 MHz
A to A	8 (5)
A to B1	11 (6)
A to B	14 (9)
A to C2	14 (9)
A to C1	21 (13)
A to C	28 (17)
B1 to B1	14 (9)
B1 to B	17 (11)
B1 to C2	17 (11)
B1 to C1	24 (15)
B1 to C	31 (19)
B to B	20 (12)
B to C2	20 (12)
B to C1	27 (17)
B to C	35 (22)
C2 to C2	20 (12)
C2 to C1	27 (17)
C2 to C	35 (22)
C1 to C1	34 (21)
C1 to C	41 (25)
C to C	48 (30)

Co-channel	200kHz	400/600 kHz

(no changes to these columns)

* * * * *

(c) The distances listed below apply only to allotments and assignments on Channel 253 (98.5 MHz), after , 1988. The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments where the following minimum distances (between transmitter sites, in kilometers) from any TV Channel 6 allotment or assignment are not met:

MINIMUM DISTANCE SEPARATION FROM TV CHANNEL 6 (82-88 MHz)

FM Class	TV Zone I	TV Zones II & III
A	16	20
B1	19	23
B	22	26
C2	22	26
C1	29	33
C	36	41

3. 47 CFR 73.610 would be amended by adding a new paragraph (f) to read as follows:

§ 73. 610 Minimum distance separations between stations.

* * * * *

(f) The distances listed below apply only to allotments and assignments on Channel 6 (82-88 MHz), after , 1988. The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments where the following minimum distances (between transmitter sites, in kilometers) from any FM Channel 253 allotment or assignment are not met:

MINIMUM DISTANCE SEPARATION FROM FM CHANNEL 253 (98.5 MHz)

FM Class	TV Zone I	TV Zones II & III
A	16	20
B1	19	23
B	22	26
C2	22	26
C1	29	33
C	36	41

FOOTNOTES

[1] Intermediate frequency (IF) is a term that refers to the center frequency in a small range of frequencies that are used internally in a receiver for amplification and filtering. Virtually all consumer FM broadcast receivers use 10.7 MHz as their IF.

[2] IF distance separation requirements are the minimum distances, by station class, that each FM broadcast transmitting antenna must be spaced from the transmitting antennas of other stations that are IF-related, that is, stations that operate on frequencies 53 or 54 channels removed (10.6 or 10.8 MHz above or below the specified station).

[3] IF interference occurs when a susceptible receiver encounters two relatively strong IF-related signals. It causes degradation of FM reception, somewhat independent of the setting of the receiver's tuner. Thus, when it occurs, IF interference can prevent clear reception by the affected receiver of many FM stations in the area.

[4] 51 Fed. Reg. 15927, published April 29, 1986.

[5] *Report and Order* in FCC 83-259, 94 FCC 2d 152 (1983); *recon., granted in part and denied in part*, 97 FCC 2d 279 (1984). The Commission amended the FM broadcasting rules to accomodate more stations by increasing the number of station classes.

[6] 52 Fed. Reg. 37786, published October 9, 1987. The Commission did not address the matter of IF distance separation requirements in the *First Report and Order*, 52 Fed. Reg. 8259, published March 17, 1987. In that order, the Commission amended the rules to permit any class of station to be allotted on 20 channels previously restricted to Class A operation only. Also, the Commission declined to remove a rule that provides for the classification of stations by zone based on transmitter location rather than the location of the communityof license.

[7] The test procedure was as follows: The sensitivity of each receiver was measured using a standard method, and two reference quieting levels were selected (30 dB and 50 dB). Automated test equipment then supplied a desired and two IF-related undesired signals directly to the antenna terminals of the receiver under test. The desired signal was increased until a quieting level 6 dB greater than the reference quieting level was achieved. Then the two undesired signals were increased until the quieting level was degraded by 6 dB (and thus returned to the reference quieting level). The strength of the undesired signals causing this degradation was then automatically recorded by the testing computer. Details on the test sample, procedures, and results are available in "Laboratory Test Results of the FM-IF Interference in Broadcast Receivers, Project: EEB-86-8", OET Technical Memorandum, FCC/OET TM87-4, June 1987, prepared by J. Ray Hallman. This report will be placed in the docket file in this proceeding, and may subsequently be obtained from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, or from the Commission's copy contractor, International Transcription Services, Inc., 2100 "M" St. N Suite 140 Wash. D.C. 20037 857-3800.

[8] An explanation of the statistical method used to extrapolate the sample data to the larger population of FM broadcast receivers is included in the laboratory report as Appendix A. Receivers were classified into several categories to generate a representative test sample and a standard equation for projecting the average performance of a representative sample into a larger population was employed to produce lower and upper boundaries of average performance for a specified confidence level.

[9] The laboratory report considered the interference potential when required separation distances are set to prevent overlap of IF-related 20 mV/m (approximately) contours, as was intended when IF distance separation requirements were originally adopted in 1965, and when such distances are set to prevent overlap of 30 mV/m contours, as was proposed for the Docket 80-90 station classes, in the *Notice*.

[10] The results of the Commission's laboratory tests tend to reinforce those of similar tests conducted by the National Association of Broadcasters (NAB) and summarized in its report "A Review of the FM-IF Taboo in Contemporary FM Broadcast Receivers in Laboratory Tests" (Edward A. Williams, Department of Science and Technology, National Association of Broadcasters, August 10, 1986). In this report, NAB concluded that the wide range of performance "suggests that manufacturers of FM broadcast receivers could give more attention to the design" of FM broadcast receivers, resulting in "less interference susceptibility, better performance, and the elimination or substantial reduction" of the Commission's IF distance separation requirements. However, NAB also stated that the wide performance range requires that the allotment process take into account the more susceptible receivers so that an undue amount of interference is not experienced by large numbers of the listening public. NAB further concluded that the proximity of a Channel 6 TV station to a Channel 253 FM station should be considered for inclusion in the IF distance separation requirements.

[11] Currently, the required separation between two IF-related Class A stations and the required separation between two IF-related Class stations prevent the overlap of the predicted 36 mV/m contours. The current distance separation requirements for the other combinations prevent the overlap of weaker contours ranging down to 24 mV/m, resulting in a higher protection level. F(50,50) propagation data is used to calculate predicted contour overlap for IF separations (*see* § 73.333, Figure 1).

[12] The minimum separation distances between two IF-related Class A stations (8 kilometers) and two IF-related Class C stations (48 kilometers) would remain the same. All other distances would be reduced. For examples, the minimum distance between two IF-related Class B stations would be reduced from 24 to 20 kilometers, the minimum distance between a Class A station and an IF-related Class C station would be reduced from 32 to 28 kilometers, and the minimum distance between two IF-related Class B1 stations would be reduced from 24 to 14 kilometers.

[13] Notwithstanding the Commission's use, in this proceeding, of contour overlap calculations to define protection levels, meeting or exceeding the required separation distances continues to constitute the only measure of compliance with § 73.207. Applicants seeking a waiver of § 73.207 are advised that alleged discrepancies between the separation distances in the rule and the contour overlap calculations presumed to underlie them do not in themselves constitute sufficient grounds for such a waiver. Other factors germane to each individual case, *e. g.* lack of an alternative antenna site, must be considered when such waiver requests are evaluated.

[14] For example, distances calculated to prevent overlap of the predicted 50 mV/m (94 dBu) contours of IF-related stations could have been proposed. This would mean that, in some locations, IF-related signals could be twice as strong as in our proposal herein. Under such a proposal, all of the minimum separation distances for IF-related stations would be reduced.

[15] The audio transmission from a TV station on Channel 6 (at 87.75 MHz) is IF-related to FM Channel 253 (98.5 MHz). A typical Channel 6 TV aural transmitter can operate with as much as 22 kilowatts effective radiated power with an antenna height above average terrain of 300 meters (TV Zone I) or 600 meters (TV Zones II and III). This is roughly equivalent to a Class C1 FM station.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

ARMSTRONG TELEPHONE COMPANY — File No. 22721-CL-P-140-B-86

For a Construction permit to establish a new cellular system to operate on frequency Block B in the Domestic Public Cellular Radio Telecommunications Service to serve the Charleston, West Virginia Metropolitan Statistical Area

MEMORANDUM OPINION AND ORDER

Adopted: March 9, 1988; Released: March 23, 1988

By the Commission:

1. Charleston, WV CellTelCo (CellTelCo), the non-wireline cellular tentative selectee in the Charleston, West Virginia MSA has filed an application seeking Commission review of the Chief, Common Carrier Bureau's (Bureau) *Order on Reconsideration*, 2 FCC Rcd 1743 (1987) (*Reconsideration Order*) which granted the application of Armstrong Telephone Company (Armstrong), the sole wireline applicant in the Charleston MSA. Armstrong filed a Reply.

BACKGROUND AND CONTENTIONS

2. Armstrong's application was denied by the Mobile Services Division (MSD) in a Memorandum Opinion and Order, Mimeo No. 6828, released September 12, 1986. The MSD concluded that Armstrong was financially unqualified because the bank letter from the Union National Bank (Union) did not satisfy the firm financial commitment standard of Section 22.917(b) of the Commission's Rules. Armstrong filed a petition for reconsideration and submitted a second letter from Union (the supplemental letter) providing a firm financial commitment to Armstrong. On reconsideration the Bureau granted the Armstrong application. The Bureau found that the clarifying information provided by the supplemental bank letter from Union satisfied the firm financial commitment standard. The Bureau stated:

> [i]n general we will not examine or consider clarifying information or amendments of this nature. However, since Armstrong is the sole wireline applicant for this market we have considered its clarifying information because of the public interest factors involved. To reopen this proceeding to the entire application, lottery and petition to deny process, would most likely result in inordinate delay of both service and competition to the Charleston MSA and would be contrary of our goal of expeditiously providing this needed service. We stress that we are considering Armstrong's clarifying information only in these very limited circumstances. In future proceedings we will be inclined to do so only where there are compelling public interest factors present. *Reconsideration Order*, *supra*.

3. In the application for review, CellTelCo contends first that the Bureau's action in the *Reconsideration Order* violated Section 22.917(b) which requires all wireline applicants, including sole applicants, to demonstrate a firm financial commitment. Second, citing *REM Communications*, DA 87-313, released March 26, 1987, *application for review pending*, CellTelCo contends that the Bureau erred by accepting the supplemental bank letter which constituted a curative amendment. CellTelCo states that under *REM* a patently defective application is not curable by amendment. CellTelCo argues that the Armstrong application was patently defective because the Union bank letter was not a firm financial commitment. CellTelCo then contends that the Bureau's decision was based solely on administrative convenience (not reopening the lottery) and that an agency can not arbitrarily treat similarly situated applicants differently. By accepting Armstrong's curative amendment, CellTelCo contends that the Bureau treated Armstrong differently from other applicants who were not permitted to cure patently defective applications with curative amendments. CellTelCo argues that administrative convenience does not constitute sufficient justification for dissimilar treatment. CellTelCo asserts that the curative amendment is a major amendment under Sections 22.918(b) and 22.23(g) of the Rules and not merely clarifying information. Finally, CellTelCo contends that since the application was never reinstated *nunc pro tunc*, the grant is procedurally defective since it must be deemed to have been filed beyond the cut-off date.

4. In response, Armstrong argues that an applicant has a statutory right to have the agency take a second look at its application, especially when the original action was taken without a hearing, and that Section 309(e) of the Communications Act of 1934, as amended, guarantees an applicant the right to a hearing in the event its application is to be denied.

DISCUSSION

5. In its *Reconsideration Order*, the Bureau made a determination based on the particular circumstances presented by this case as well as public interest concerns. We agree with its conclusions and affirm them. However, because the Bureau's decision was somewhat vague we set forth herein more detailed reasoning. First, we do not believe the underlying purpose of Section 22.917 of the Rules will be advanced by a strict enforcement of the rule's procedural deadlines in this instance. The purpose of that rule is to determine quickly whether a tentative selectee is financially qualified so that a grant may be made and that service to the public is commenced. *See Memorandum Opinion and Order on Further Reconsideration*, Docket 83-1096, 59 Rad. Reg. (P&F) 2d 407, 411-413 (1985). Because in most instances if a selectee is unable to make the requisite showing, another applicant can immediately take its place, strict compliance with the rule is generally warranted. In this situation; however, Armstrong was the sole applicant, and its application was

not otherwise contested. If we do not waive the procedural requirements of Section 22.917 and permit Armstrong to submit its corrected financial showing, both additional service and competition in the Charleston market will be significantly delayed. In short, a waiver is not only warranted in this case, but it is consistent with the rule's purpose of providing service to the public quickly. Second, the supplemental bank letter establishes that the Union Bank and Armstrong have shared a long term business relationship. It is reasonable to conclude that the Union Bank would have initially provided a contractually binding commitment but was asked to provide only a letter giving the Union Bank's reasonable assurance that financing would be provided.

6. Of course, we recognize that the second letter from Union Bank clarifying the first letter was untimely and constituted a major amendment. In fact, the Bureau noted that it does not usually accept clarifying information or amendments of this kind. On reconsideration, the Bureau, while failing to expressly say so, apparently intended to waive the relevant rules and permit Armstrong to amend its application with the letter. Such actions are fully within the discretion of the Commission, especially when enforcement of the rule controverts its very purpose, as it does in this instance. *See Wait Radio v. F. C. C.*, 418 F. 2d 1153 (D.C. Cir. 1969); *Health and Medicine Policy Research Group v. F. C. C.*, 807 F. 2d 1038 (D.C. Cir. 1986). Therefore, in light of the very special circumstances surrounding this case, we find that grant of a waiver is justified, and the Bureau's decision is hereby affirmed. We expressly waive our rules to permit Armstrong to amend its application, and we will reinstate the application *nunc pro tunc*.[1]

7. Petitioners have claimed that the Bureau's decision was based solely on administrative convenience. We disagree. In the *Reconsideration Order*, the Bureau determined that since Armstrong was the sole applicant in the market, no harm would occur to anyone else by granting the application. The Bureau weighed the public interest concern of expeditiously providing service to the public against strict application of its rules and concluded that it was in the public interest to grant the application. We conclude that under these circumstances, the public interest continues to weigh against rescinding the grant and reopening the lottery proceedings.

8. Accordingly, for the foregoing reasons, IT IS HEREBY ORDERED, That the application for review filed by Charleston WV CellTelCo IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTE

[1] The REM Communications decision, cited by petitioner as an inconsistent decision, is distinguishable. REM involved an application that contained defects that were so serious that they rendered the application in question unacceptable for filing. Thus, in that instance, the application could not even be processed. Such is not the situation before us in this case. Armstrong's application was acceptable for filing; instead, it merely failed to adequately provide its firm financial showing within the 30 days provided by Section 22.917(b) of the Rules. More importantly, REM involved other applications that could replace the defective one. In this proceeding Armstrong was and is the sole wireline applicant.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

MANDEVILLE BROADCASTING CORP. (Assignor) File NO. BALH-860411GT

INFINITY BROADCASTING OF LOS ANGELES (Assignee)

For Assignment of License
of Station KROQ-FM, Pasadena, CA

ORDER

Adopted: March 11, 1988; Released: March 23, 1988

1. Before the Commission are a Petition for Reconsideration of Tony Lazzarino filed June 1, 1987, by Tony Lazzarino (Lazzarino); an Opposition of Mandeville Broadcasting Corp. (Mandeville) to Petition for Reconsideration of Tony Lazzarino, filed June 11, 1987; and a Reply to Opposition of Mandeville Broadcasting Corp. to Petition for Reconsideration of Tony Lazzarino, filed June 23, 1987, by Lazzarino. Lazzarino's filings seek reconsideration of the Commission's *Memorandum Opinion and Order*, 2 FCC Rcd 2523 (1987) (Commission's *MO&O*), which denied an application for review of a *Memorandum Opinion and Order*, released August 15, 1986 (Bureau's *MO&O*), by the Chief, Audio Service Division (Bureau), dismissing Lazzarino's petition to deny the application to assign the license to operate KROQ-FM, Pasadena, California, from Mandeville to Infinity Broadcasting of Los Angeles, Inc. (Infinity). Despite the fact that Lazzarino did not have standing to file a petition to deny, his petition was considered as an informal objection pursuant to Section 73.3587 of the Commission's Rules and was denied. The Commission's *MO&O* rejected claims by Lazzarino that the Bureau's ruling on his petition to deny did not fully consider all of his arguments and all of the documents he had submitted.

2. In his petition for reconsideration, Lazzarino, for the most part, reiterates arguments already considered and rejected by the Commission in dismissing his application for review. It is well established that the Commission will not grant reconsideration merely for the purpose of permitting reargument of matters previously considered.[1] Lazzarino does make, however, two allegations that were not previously raised. First, Lazzarino asserts that reconsideration is warranted because he has discovered that a Commission staff member who signed the Mass Media Bureau's comments on the joint petition for approval of settlement agreement that resolved the comparative renewal proceeding for KROQ-FM also authored the Bureau's *MO&O* which dismissed his petition to deny and the Commission's *MO&O* which denied his application for review of the Bureau's *MO&O*. Lazzarino alleges that this staff member was chosen by the Commission as part of a scheme to deny him due process and that it is wrong for the same person to have participated in the aforementioned Bureau and Commission actions.[2] Lazzarino also contends that former Chairman Mark S. Fowler's association with the law firm of Latham & Watkins is suspect within the context of this proceeding.

3. In its opposition, Mandeville contends that, other than allege that another Commission employee is part of a plot against him, Lazzarino fails to present any relevant events occurring or facts discovered after he filed his application for review. Mandeville points out, citing Section 1.106(b)(2) of the Commission's Rules, that absent such events or facts, a petition for reconsideration will not be entertained by the Commission. Mandeville further argues that Lazzarino's due process rights were not violated by the fact that the same agency employee who prepared the Bureau's *MO&O* dismissing Lazzarino's petition to deny, also wrote the Commission's *MO & O* denying Lazzarino's application for review. Mandeville cites *Marathon Oil Co. v. Environmental Protection Agency*, 564 F. 2d 1253, 1265 (9th Cir. 1977), where it was held that it was not improper for a regional administrator to make an initial decision and a decision on review, in support of this proposition.

4. We have considered Lazzarino's new allegations and find no factual basis to support his claim that the Commission and its staff have failed to fully and impartially consider his allegations. First, we see no impropriety in the fact that a Commission staff member who signed the Mass Media Bureau's comments on the KROQ-FM settlement agreement, thereafter advised in the Bureau's ruling on a petition to deny a subsequent transfer of the station.[3] We note that the "separation of functions" provision of the Administrative Procedure Act (APA) which bars the combination of decisionmaking and prosecutorial functions, does not apply to these proceedings; the APA's prohibition governs only formal adjudications required by statute to be conducted "on the record." *See* 5 U.S.C. 554(d); *Porter County Chapter of the Izaac Walton League of America, Inc. v. Nuclear Regulatory Commission*, 606 F.2d 1363, 1371 (D.C. Cir. 1979); *Reed v. Morton*, 480 F.2d 634, 643 (9th Cir. 1973) (Section 554(d) does not apply except where there is a statutory or consititutional requirement that an agency decision be preceded by a formal hearing). Moreover, even assuming that the complainant's interest in blocking the license transfer is entitled to fifth amendment protection, the staff member's participation in the decision not to designate this matter did not deny the complainant due process. In rejecting a similar claim of bias in *Porter County*, *supra*, the court of appeals noted that "the law does not require that the Commission be deprived of staff administration because of the speculation that a judgment of the past may preempt the future. The due process clause makes a basic assumption of intellectual integrity in assessing a whole record in the light of new information." 606 F.2d at 1372; *Withrow v. Larkin*, 421 U.S. 35, 47 (1975). Accordingly, we conclude there is no statutory or constitutional basis for Lazzarino's procedural objection.

5. Finally, we also reject Lazzarino's reliance on an "attestation" submitted by former Chairman Fowler to the Commission's Internal Review and Security Division concerning his employment by the law firm of Latham & Watkins as evidence of Commission error. Since that law

firm represents Mandeville, Lazzarino asserts that the attestation goes "to the heart" of his submission. Apparently, Lazzarino is referring to former Chairman Fowler's June 15, 1987, submission pursuant to Disciplinary Rule 9-102(c). That filing advised the Commission of the procedures employed by Latham & Watkins to screen Mr. Fowler from participation in this proceeding and included his statement of non-participation in this case at the firm. We can find nothing in former Chairman Fowler's submission that supports the contention that the various Bureau and Commission rulings that are the subject of Lazzarino's filing are in any way suspect or tainted.

6. In sum, we have fully reviewed the Commission's *MO&O* and find no error. Accordingly, pursuant to Section 1.115(g) of the Commission's Rules, the petition for reconsideration is denied.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTES

[1] Section 1.115(g) of the Commission's Rules provides that a petition requesting reconsideration of a ruling which denies an application for review will be entertained only if: (1) the petition relies on facts which related to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or (2) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.

[2] Lazzarino also seems to allege that he was misled as to the "Public Notice date" of the Bureau's ruling. However, it is unclear from his allegation how he was misled or how he may have been prejudiced, since his allegations have been fully considered.

[3] The ultimate decision on the petition to deny ruling was, of course, made by the Bureau, not the staff author responsible for the initial draft.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-92

In re Applications of

WILLIAM L. ZAWILA Templeton, California Req: 1060 kHz, 1 kw, D	File No. BP-851126AF
GARRY & VIRGINIA INFANTE BRILL Templeton, California Req: 720 kHz, 1 kw, 0.25 kw-LS, DA-2, U	File No. BP-860627AD
MARLENE V. BORMAN Lake Isabella, California Req: 1060 kHz, 0.5 kw, DA-D	File No. BP-860724AE
JERRY J. COLLINS Atascadero, California Req: 720 kHz, 1 kw, DA-1, U	File No. BP-860218AJ (DISMISSED)

For Construction Permit

HEARING DESIGNATION ORDER

Adopted: February 19, 1988; Released: March 23, 1988

By the Chief, Audio Services Division:

1. The Commission, by the Chief, Audio Services Division, acting pursuant to delegated authority, has under consideration the mutually exclusive applications of William L. Zawila (Zawila), Garry & Virginia Infante Brill (Brill), Marlene V. Borman (Borman) and Jerry J. Collins (Collins).[1] We also are in receipt of a "petition to dismiss application," filed October 30, 1987 by Brill and directed at the Collins proposal. It will be considered as an informal objection pursuant to Section 73.3587 of our Rules.

2. *The Collins application.* When Collins submitted this application on February 18, 1986, he already had pending an application to build a new AM station at Carmel Valley, California (BP-850531AL), which subsequently was granted on February 18, 1987. The predicted 1 mV/m contours of the Carmel Valley and Atascadero facilities overlap in violation of 47 C.F.R. § 73.3555(a)(1). Thus, at the time the Atascadero application was filed, it was inconsistent with the pending Carmel Valley application pursuant to 47 C.F.R. § 73.3518[2] and must be dismissed. *See Big Wyoming Broadcasting Corp.*, 2 FCC Rcd. 3493 (1987); *see also LNJ Communications*, 2 FCC Rcd. 6072, 6074 (1987). Accordingly, this application will be dismissed.

3. *The Brill pleading.* In view of our action in the preceeding paragraph, the Brill informal objection will be dismissed as moot.

4. *The Zawila application.* Section V-A, Paragraph 8 of FCC Form 301 requires applicants to submit a specified type and number of photographs of the proposed site. The applicant, to date, has not complied with this requirement and an appropriate amendment is therefore necessary.

5. In addition, Zawila's self-styled certification of site availability does not conform to our requirements as it lacks a signature by "the owner or person possessing control of the site or structure." An issue will therefore be specified.

6. *Blanketing.* Section 73.24(g) of our Rules requires the population within the 1 V/m contour to be less than 300 persons or less than 1.0 percent of the population within the 25 mV/m contour. On their respective 301 forms both Zawila and Brill checked "no" opposite Question 10, Section V-A, which asks whether applicants are in compliance with this provision. As neither applicant requests an appropriate waiver of the blanketing requirement, it may well be that the wrong boxes were inadvertently checked. Nevertheless, issues must be added, with provisions for waivers, if appropriate.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify issues to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal would best provide a fair, efficient and equitable distribution of radio services. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

8. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to William L. Zawila whether the applicant has reasonable assurance that the transmitter site specified will be available for the use proposed.

2. To determine with respect to William L. Zawila and to Garry & Virginia Infante Brill whether the applicants' proposals comply with Section 73.24(g) of the Commission's Rules, and if not, whether circumstances exist which warrant waiver of that Rule.

3. To determine: (a) the areas and populations which would receive primary aural service from the proposal and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

4. To determine, in the event it be concluded that a choice among the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. IT IS FURTHER ORDERED That in accordance with paragraph 2 hereinabove, the application of Jerry J. Collins is HEREBY DISMISSED.

10. IT IS FURTHER ORDERED, That the informal objection filed by Garry & Virginia Infante Brill IS DISMISSED as moot.

11. IT IS FURTHER ORDERED, That William L. Zawila shall file the amendment described in paragraph 4, above, with the presiding Administrative Law Judge within 30 days of the release of this Order.

12. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N. W. Washington, D.C.

13. IT IS FURTHER ORDERED, That to avail themselves of an opportunity to be heard, the applicants shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **April 13, 1988,** file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

14. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-98

In re Applications of

WIREGRASS EDUCATIONAL RADIO, INC.
(hereafter Wiregrass)
Req: Channel 217A — File No. BPED-860806ML

JAMES SMITH MINISTRIES
(hereafter Smith)
Req: Channel 219A — FILE No. BPED-861031ME

BETHANY BIBLE COLLEGE & BETHANY THEOLOGICAL SEMINARY, INC.
(hereafter Bethany)
Req: Channel 216A — File No. BPED-861229MH

For a Construction Permit for
a New Non - Commercial Educational
FM Station in Dothan, Alabama

HEARING DESIGNATION ORDER

Adopted: February 22, 1988; Released: March 23, 1988

By the Assistant Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Smith*. Applicant has failed to provide the exhibits required by Section II, 1(c) and Section IV, FCC Form 340 describing how the station will be used to advance an educational program, the purpose and objective in establishing the proposed station and the proposed program policies, respectively. An issue will be specified.

3. By letter dated May 14, 1987, Bethany indicated that it had contacted Smith and Wiregrass in an attempt to negotiate a share-time agreement, but that the matter could not be resolved. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 Fed. Reg. 49560 (October 24, 1978). It should be noted that our action specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing, or at any time during the course of the hearing from participating in negotiations with a view toward establishing a share-time agreement between themselves.

4. Since no determination has been received from the Federal Aviation Administration as to whether the antenna proposed by the applicants below would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding.

APPLICANTS: Wiregrass, Bethany.

5. Inasmuch as this proceeding involves competing applicants for noncommercial educational facilities, the areas and populations aspect of the standard comparative issue will be modified in accordance with the Commission's prior action in *New York University*, 10 RR 2d 215 (1967). Thus, the evidence adduced under this issue will be limited to available noncommercial educational FM signals within the respective service areas.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) whether Smith complies with the licensing requirements and service provisions of 47 C.F.R. § 73.503 of the Rules, and (b), in light of the evidence adduced pursuant to the foregoing issue, whether Smith is qualified to construct and operate the requested facilities as proposed.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by the following appli- cants would constitute a hazard to air navigation: Wiregrass, Bethany.

3. To determine: (a) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (b) the extent to which each of the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants; and (c) whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

9. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief,

Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **April 13, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-94

In re applications of

DAVID O'CONNOR (hereafter O'Connor)	File No. BPH-851114ME
CHAUTAUQUA COMMUNICATIONS CORPORATION, INC. (hereafter Chautauqua)	File No. BPH-851114MF
CATOCTIN BROADCASTING CORPORATION (hereafter Catoctin)	File No. BPH-851115MG
Hector Rivera & Vincent T. Ridikas d/b/a CHAUTAUQUA RADIO LIMITED PARTNERSHIP (hereafter Rivera)	File No. BPH-851115MH
LAKE SHORE BROADCASTING COMPANY, INC. (hereafter Lake Shore)	File No. BPH-851115MI
ROBERT M. BENNETT (hereafter Bennett)	File No. BPH-851115MJ

For a Construction Permit for a New FM Station on Channel 243A in Fredonia, New York

HEARING DESIGNATION ORDER

Adopted: February 22, 1988; Released: March 23, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Catoctin.* Henry Serafin is the sole principal of Catoctin, the licensee of AM Station WBUZ, Fredonia, New York. In a recent Review Board *Decision*, 62 R.R. 2d 1132 (1987), Catoctin's renewal application for WBUZ was denied based upon the misconduct of Henry Serafin, including willful and repeated violations of Commission Rules, and misrepresentations to the Commission.[1] The proceeding involving WBUZ commenced with the Commission's *Memorandum Opinion and Order* (*MO & O*), 50 Fed. Reg. 19229, published May 7, 1985. The *MO & O* specified four separate misrepresentation and/or "character" issues against Catoctin. Catoctin's instant FM application was filed on November 15, 1985. In that application, Catoctin answered "no" to Section II, Item 7(d), (FCC Form 301, April, 1985) which asked whether Catoctin "had any interest in a broadcast application in any Commission proceeding which left unresolved character issues against [it]." In light of the pending renewal proceeding involving its AM station, Catoctin's response appears to constitute a misrepresentation and/or to have lacked candor. Accordingly, an appropriate issue will be specified. Furthermore, a contingent issue will be specified, in the event that Catoctin is ultimately disqualified in MM Docket No. 85-92, to determine Catoctin's qualifications to receive a grant of its application in this proceeding. Moreover, Catoctin will be precluded from relitigating any prior findings made against it in MM Docket No. 85-92. *United Broadcasting Co.*, 49 R.R. 2d 597 (1981).

3. In view of the above disposition of this matter, the petitions seeking denial of Catoctin's application filed by Robert Bennett (8/5/87) and the Chautauqua County Rural Ministry, *et. al.* (8/6/87) will be DISMISSED as MOOT.

4. *Lake Shore.* R. Michael Goldman and Gail M. Goldman, the principals of Lake Shore, are siblings who each own 4.28% of James Broadcasting Co., licensee of WJTN(AM) and WWSE(FM), Jamestown, New York.[2] The principals state that they would divest themselves of their interests in James Broadcasting Company, Inc., upon grant. Accordingly, in the event that Lake Shore's application is granted, R. Michael Goldman and Gail Goldman will be required to dispose of their interests in James Broadcasting Company.

5. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Catoctin	6/30/86
Rivera	7/1/86, 2/2/87
Bennett	1/13/86, 3/6/86

6. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. Since no determination has been received from the Federal Aviation Administration as to whether the antenna proposed by Lake Shore would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding.

8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Catoctin's response to Item 7(d) of its application lacked candor and/or misrepresented facts to the Commission, and, in light of the evidence adduced, whether Catoctin is qualified to become a Commission licensee.

2. To determine, in the event that Catoctin is ultimately disqualified in MM Docket No. 85-92, the effect of that disqualification on Catoctin's qualifications to be a Commission licensee.

3. To determine whether there is a reasonable possibility that the tower height and location proposed by Lake Shore would constitute a hazard to air navigation.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That the petitions to deny Catoctin's application filed by Robert Bennett and Chautauqua County Rural Ministry, *et.al* are hereby DISMISSED as MOOT.

11. IT IS FURTHER ORDERED, That in the event Lake Shore's application is granted, R. Michael Goldman and Gail Goldman will be required to dispose of their interests in James Broadcasting Company, thereby divesting themselves of their interests in WJTM(AM) and WWSE(FM), Jamestown, New York.

12. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by the following applicants ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein:

O'Connor, Catoctin,
Rivera, Bennett.

13. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

14. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

15. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **April 13, 1988,** file with the Commission, in triplicate, written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

16. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] Catoctin filed an application for review of the Board's *Decision*, which the Bureau opposed. The appeal is pending, (MM Docket No. 85-92).

[2] The parents and brother of the principals of Lake Shore collectively own approximately 87% of James Broadcasting Company. WWSE(FM) is located 20.3 miles from the proposed station and would overlap the 60 dBu contour of the proposed station by 72%, while the proposed station would overlap 15% of WWSE's 60 dBu.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-91

In re Applications of

JBD INCORPORATED (hereafter JBD)	File No. BPH-851114MG
DONALD LEE MIRACLE AND VERLAN LEE GRAY (hereafter Miracle/Gray)	File No. BPH-851115MO
LINDA F. MCCULLEY (hereafter McCulley)	File No. BPH-851115NF
NEW SOUTH COMMUNICATIONS, LTD. (hereafter New South)	File No. BPH-851115MM (DISMISSED HEREIN)
HARROGATE BROADCAST GROUP, INC. (hereafter HBG)	File No. BPH-851115MN (PREVIOUSLY DISMISSED)

For a Construction Permit
For a New FM Station on
Channel 243A (96.5 MHz)
in Harrogate, Tennessee

HEARING DESIGNATION ORDER

Adopted: February 19, 1988; Released: March 23, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matters.* On April 23, 1986, HBG filed a petition seeking reconsideration of the FM Branch's action of March 24, 1986 returning HBG's original application as unacceptable for filing. That application, which was originally filed on November 15, 1985, was found to be unacceptable because a discrepancy existed between the coordinates HBG cited in Section V-B, Item 4, and Section V-G, Item 1, and the transmitter site location plotted on the 7.5 minute U.S. Geographic Survey Topographic map which it supplied (Exhibit E-3). Specifically, the coordinates listed in V-B, Item 4 and V-G, Item 1 are: N 36' 36' 00" and W 83' 36' 13". However, the coordinates of the site plotted in Exhibit E-3 are: N 36' 35' 40" and W 83' 36' 13". It was therefore impossible to determine from the face of the application whether the proposal was in compliance with the Commission's Rules.

3. In HBG's petition for reconsideration, it argues (a) that the discrepancies between the listed coordinates and the 7.5 minute topographic map (Exhibit E-3 of the application) are "de minimis" and (b) that the correct coordinates can easily be ascertained from the application as a whole. Specifically, HBG asserts that the location "was clearly and precisely described at Section V-B, Item 8; Section V-G, Item 1; and in Exhibit E-7 as well as depicted in E-2"; and that therefore the coordinates plotted on the topographic map were correct. However, after a careful review of HGB's application, we find no merit in its assertions. The narrative sentences which, in Section V-B, Item 8, Section V-G, Item 1, and Exhibit E-7, indicate transmitter location, are not geographic coordinates but rather are street locations or descriptive directions to the transmitter site. This data is ineffectual in determining the exact geographic coordinates of the site. HBG also states that Exhibit E-2 provides some verifying coordinates. However, Exhibit E-2 cannot be read accurately enough to allow us to corroborate which one of the conflicting sets of coordinates is correct.

4. HBG further contends that the Commission, by applying the FM processing standards established in the *Report and Order* in MM Docket 84-750, 50 Fed. Reg.19936 (May 13, 1985) (hereafter "Report and Order), to its petition, has unfairly exaggerated the seriousness of its error. HBG contends that a "superior and more balanced approach" to the resolution of its petition is contained in the Commission's *Public Notice* in FCC 84-366, COMMISSION STATES FUTURE POLICY ON INCOMPLETE AND PATENTLY DEFECTIVE AM AND FM CONSTRUCTION PERMIT APPLICATIONS (Released August 2, 1984) (hereafter Public Notice). HBG argues that pursuant to the *Public Notice*, a minor curative amendment would be permitted, enabling HBG's error to be easily and expeditiously resolved.

5. These arguments indicate that HBG has misunderstood the relationship between the *Public Notice* and the *Report and Order*. The *Report and Order* "hard look" FM processing standards superseded the minor amendment policy discussion of the *Public Notice*. Pursuant to the *Report and Order* in 84-750, all curative FM amendments correcting acceptability defects must be filed within 30 days after the publication of the most recently issued Public Notice of Tender. *See* 47 C.F.R. § 73.3522(a)(6). In the matter before us, December 13, 1985 was the date of the most recently issued Public Notice of Tender. Since HBG did not file an amendment within 30 days of that date, it does not now have any right to file a curative amendment.

6. A petition for reconsideration must "cite the findings of fact and/or conclusions of law which petitioner believes to be erroneous, and shall state with particularity the respects in which he believes such findings and conclusions should be changed." 47 C.F.R. § 1.106(d)(2). For the reasons stated, we find that HBG has failed to establish in its petition any such error on the part of the Commission. Therefore we find no basis for overturning our decision to return its application as unacceptable for filing. Accordingly, its petition for reconsideration will be denied.

7. *New South.* On September 23, 1987, New South's application was placed on public notice of acceptance. Further engineering study reveals, however, that the geographic coordinates specified in the application do not match the coordinates for the site plotted in Exhibit 2 (the 7.5 minute topographic site map). The coordinates speci-

fied in Section V-B, Item 4 and Section V-G of the application are: N latitude 36' 34" 48' and W longitude 83' 34" 47'. The coordinates plotted on the 7.5 minute map are: N latitude 36' 34" 48' and W longitude 83' 34" 37'. It is therefore impossible to determine from the face of the application whether the proposal is in compliance with the Commission's Rules.

8. The geographic coordinates, to the nearest second, of the proposed transmitter site are critical to processing the application. Absence of this data makes it impossible to determine the distances from the proposed sites to other proposed or exisiting broadcast facilities and to the community of license. In the commercial FM service, spacing determines the acceptability of an application where mutual exclusivity exists with respect to a given allocation (*see* 47 C.F.R.§73.207), and it determines when mutual exclusivity exists between applicants for, or permittees of, different allocations. Finally, the geographic location also determines whether protection must be afforded to Commission monitoring facilities and to radio quiet zones (*see* 47 C.F.R. § 73.1030), marks the center of the "blanketing" area (*see* 47 C.F.R. § 73.315), and is fundamental to analysis of a proposal's environmental effects and of its electromagnetic effects on other, nearby communications facilities.

9. Moreover, the staff was unable to confidently and reliably, on the basis of New South's application taken as a whole, derive the needed information or resolve the resulting inconsistency. *See Report and Order* at Appendix D; *see also Star Signal Corporation*, 1 FCC Rcd 405, 406 (1986). Accordingly, in view of the above-referenced fundamental importance of accurate plotting of coordinates, we find that the application of New South was inadvertently accepted for filing and will be dismissed.

10. *McCulley*. On April 30, 1986, HBG filed a Petition for Stay against McCulley.[1] HBG requested that processing of the application of McCulley be stayed "until such time as the Petition for Reconsideration filed by HBG has been resolved and its application reinstated". Since that Petition for Reconsideration will be denied (see paragraphs 6 and 13 herein), the Petition for Stay will be dismissed as moot.

11. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

13. IT IS FURTHER ORDERED, That the Petition for Reconsideration filed by HBG IS HEREBY DENIED.

14. IT IS FURTHER ORDERED, That the Petition for Stay filed by HBG IS DISMISSED AS MOOT.

15. IT IS FURTHER ORDERED, That the application of New South IS HEREBY DISMISSED.

16. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

17. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **April 13, 1988,** file with the Commission, in triplicate, written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

18. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] HBG also addressed its Petition for Stay to the New South application. However, since the application of New South is to be dismissed (see paragraph 6, above), HBG's Petition is moot as to that applicant, as well.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-100

In re applications of

SIERRA-SHINGLE SPRINGS BROADCASTING (hereafter Sierra)	File No. BPH-860926MC
DONNA M. CROSSON (hereafter Crosson)	File No. BPH-860929MA
Chris W. Kidd and James O'Brien d/b/a KIDD BROADCASTING COMPANY (hereafter Kidd)	File No. BPH-860929MG
LEO KESSELMAN (hereafter Kesselman)	File No. BPH-860929MH
ROBERT SIMPSON (hereafter Simpson)	File No. BPH-860929MI
LOS BANOS BROADCASTING (hereafter Los Banos)	File No. BPH-860929MJ
LOBSTER COMMUNICATIONS CORPORATION (hereafter Lobster)	File No. BPH-860929MK
TOURS BROADCASTING COMPANY (hereafter Tours)	File No. ARN-860930MC (PREVIOUSLY DISMISSED)

For a Construction Permit for
a New FM Station on
Channel 271A in
Shingle Springs, California

HEARING DESIGNATION ORDER

Adopted: February 24, 1988; Released: March 23, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exlusive applications for a new FM station.

2. *Preliminary Matters.* The window for all applicants seeking facilities on the instant channel closed on September 29, 1986; the application filed by Tours (Petitioner) was received by the Commission on September 30, 1986. Consequently, by letter dated January 15, 1987, the Chief, FM Branch returned Tours' application as untimely.

3. On February 17, 1987, Tours filed a petition requesting: (i) reconsideration of the return and (ii) stay of the instant consolidated proceeding. Los Banos Broadcasting filed an opposition thereto on March 2, 1987.

4. In support of its petition, Tours contends that the subject application was delivered to the Express Mail Guaranteed Next Day Service of the U.S. Post Office on September 27, 1986 at approximately 4:55 pm. Petitioner further states that Irene M. Tours, its principal, "requested and received, positive and unequivocal assurance from postal authorities in writing, that delivery to [the Commission] would be effected absolutely no later than 3:00 pm on September 28, 1986." (petition p.3). However, for some unspecified reason, delivery of Petitioner's application was delayed by the postal service until September 30, 1986.

5. Citing Commission precedent, chiefly *Caldwell Television Associates, Ltd., et. al.* 93 FCC 2d 257 (1983), wherein the Commission accepted an application filed one day late which had been delayed by inclement weather, the Petitioner requests reinstatement of the instant application, as its principal had done "everything reasonably possible to timely file [the subject] application, but was thwarted in its mission for reasons wholly beyond its control." (petition, p.5)

6. By *Public Notice* FCC 85-534 (36206), released October 4, 1984, 58 RR 2d 1706 (1985) the Commission prospectively overruled *Caldwell* and held that in the future it would "adhere strictly to the standard that applicants seeking waiver of Commission application filing deadlines demonstrate unusual or compelling circumstances." In this regard, the Commission stated that it would "no longer consider as unusual or compelling . . . requests for waiver based upon claims that [a] . . . delivery service . . . was responsible for the tardy filing." The Commission continued: "Although these circumstances may be unexpected, they are reasonably forseeable and therefore applicants should allow enough time to meet cutoff deadlines to account for such unanticipated delays." Moreover, the Commission noted that absent a calamity of a widespread nature that even the best of planning could not have avoided, applicants will be held to assume the risk for almost all events which may occur to prevent timely filing.

7. The Commission concluded that the above interpretation of Commission requirements, although strict, is "necessary in order to assure that all applicants are treated fairly and reasonably in their dealing with Commission processes and to guarantee that there is an identifiable point in time when the Commission can close the door to new applicants, thus assuring that the Commission can effectively and efficiently fulfill its public interest mandate.

8. Controlling precedent specifically rejects the justification proferred in this matter, so we are duty bound to discount the Petitioner's argument. Accordingly, reconsideration is not warranted, and the instant petition is denied.

9. *Sierra.* (a) As a limited partnership, Sierra must certify that Kathleen Bailey, its limited partner, will not be involved in any material respect in the management or operation of the proposed station, in accord with *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), *recon. granted in part*, 58 RR 2d 604 (1985). Therein, the Com-

mission stated that limited partnership interests were not attributable for the purposes of the multiple ownership rules if the applicant certified that the limited partners will "not be involved in any material respect in the management or operation of" the proposed station. *Attribution*, at 1023. The Commission defined the requisite degree of noninvolvement in paragraphs 48-50 of the reconsideration. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards. *Attribution*, at 1034. Accordingly, there is no need for Sierra to provide information as to the limited partners if it can submit the necessary certification and showing that limited partnership interests will be sold only to individuals or entities that are sufficiently insulated. If the certification and showing are not appropriate in this case, the necessary information as to each limited partner will have to be filed as an amendment. Finally, since the Commission retained the cross-interest policy as to other attributable media interests in the same area (*Attribution*, at 1030), Sierra will be required to state whether the limited partners have or could have other media interests subject to the cross-interest policy and identify the limited partners with any such interest, identify the other local media, and state the nature or extent of the ownership interest. Sierra must submit such a certification to the Administrative Law Judge within 30 days of the release of this Order.

(b) On November 21, 1986, Sierra amended its application to correct data concerning the height and elevation of the existing tower on which it proposes to side-mount its antenna. This amendment contained two discrepancies concerning the effective radiated power and the height above average terrain. The corrected tower data placed the site at a lower elevation of 1933 feet. Consequently, the applicant also corrected the height of the radiation center above mean sea level (RCAMSL) and above average terrain (HAAT) to 2423 feet and 984 feet respectively. To compensate for this lower HAAT, Sierra increased its effective radiated power (ERP) from 0.24 kilowatts to 0.29 kilowatts. Although the ERP was stated in many places throughout the amendment as 0.29 kw, it was apparently specified incorrectly in Section V-B as 0.24 kw.

Sierra indicates in Section V-B an HAAT of 984 feet. However, in the brief engineering narrative of Section V-G, Sierra stated its proposal as 0.29 kw ERP at 1074 feet HAAT. This HAAT is the same as that proposed in the original application.

In view of the above, the Commission has determined confidently and reliably, drawing on the application as a whole, that Sierra's amended ERP and HAAT is 0.29kw and 984 feet respectively. Accordingly, Sierra is required to submit a corrective amendment to the presiding Administrative Law Judge.

10. *Kidd*. In response to question 4, Section V-B, Kidd indicated the coordinates of its proposal as 38' 43' 30" N, 120' 48' 30" W. However, the coordinates plotted on the site map and stated in Section V-G, question 1 are 38' 43' 30" N, 120' 48' 43" W. Drawing on the application as a whole, the Commission's staff has determined confidently and reliably that the applicant will locate on the existing LPTV tower, channel 62, in Shingle Springs, at the correct coordinates of 38' 43' 30" N, 120' 48' 43" W. Accordingly, Kidd shall file an amendment correcting the coordinates stated in Section V-B within 30 days of the release of this Order.

11. *Kesselman*. The coordinates stated throughout Kessleman's application with one exception, are 38' 37' 53" N, 120' 51' 26" W. The latter are also the coordinates plotted on the site map of Kesselman's application. However, the coordinates *stated* on the site map are 38' 37' 53" N, 121' 51' 26" W. Drawing on the application a a whole, the Commission is able to determine the correct set of site coordinates. Accordingly, Kessleman shall file an amendment correcting the coordinates stated on the site map within 30 days of the release of this Order.

12. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Crosson	12/1/86 (engr & legal)
Lobster	12/16/86; 7/24/87

13. Data submitted by the applicants indicate there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

14. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

15. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

16. IT IS FURTHER ORDERED, That the petition for reconsideration filed by Tours is DENIED.

17. IT IS FURTHER ORDERED, That Sierra shall submit the certification required by paragraph 9(a) and the corrective amendment called for in 9(b), *supra*, to the presiding Administrative Law Judge, within 30 days after this Order is released.

18. IT IS FURTHER ORDERED, That Kidd shall file the corrective amendment called for in paragraph 10, *supra*, with the presiding Administrative Law Judge within 30 days of the release of this Order.

19. IT IS FURTHER ORDERED, That Kessleman shall file the corrective amendment called for in paragraph 11, *supra*, with the presiding Administrative Law Judge within 30 days of the release of the Order.

20. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by the following applicants ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein: Crosson and Lobster.

21. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

22. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **April 13, 1988,** file with the Commission, in triplicate, written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

23. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-97

In re Applications of

DON H. BARDEN (hereafter Barden) — File No. BPH-860507MG

JULIE G. WRENN (hereafter Wrenn) — File No. BPH-860507MH

MICHAEL JOSEPH SHUMPERT (hereafter Shumpert) — File No. BPH-860507MI

For Construction Permit
For a New FM Station
at Vassar, Michigan
Channel 255A (98.9 MHz)

HEARING DESIGNATION ORDER

Adopted: February 22, 1988; Released: March 23, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Other Matters*. The applicants below have petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after January 30, 1987, the last date for filing minor amendments as of right. Under 47 C.F.R. § 1.65 all of the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from such amendments will be disallowed.

APPLICANTS	AMENDMENTS filED
Barden	April 30, 1987, August 14, 1987, August 25, 1987, September 16, 1987, September 25, 1987 October 27, 1987, December 23, 1987, January 14, 1988 and January 29, 1988
Shumpert	September 8, 1987 (engineering)

3. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. The Federal Aviation Administration has determined that the towers proposed by Barden and Wrenn would constitute hazards to air navigation. Accordingly, an appropriate issue will be specified.

5. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by the following applicants would constitute a hazard to air navigation: Barden, Wrenn.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

7. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Barden and Shumpert ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

8. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

9. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **April 13, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-93

In re Applications

OLD EUREKA BROADCASTING, INC. (hereafter OEB)	File No. BPH-860314MH
GAYLE M. GJOVIK (hereafter Gjovik)	File No. BPH-860317MN
LAKEVILLE BROADCASTING FOUNDATION (hereafter LBF)	File No. BPH-860317MO
LAKEVILLE BROADCASTING, INC. (hereafter LBI)	File No. BPH-860317MP
FAMILY STATIONS, INC. (hereafter Family)	File No. BPED-860317MQ
SOUTHERN TWIN CITIES AREA RADIO, INC. (hereafter Southern Twin)	File No. BPH-860317ML (DISMISSED HEREIN)

For a Construction Permit for a New FM Station in Lakeville, Minnesota on Channel 286A

HEARING DESIGNATION ORDER

Adopted: February 22, 1988; Released: March 23, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. *Southern Twin.* On May 20, 1987, the application of Southern Twin was placed on public notice of acceptance. Further engineering study revealed, however, that the proposed transmitter site failed to protect the 16 kilometer buffer zone afforded to second adjacent channel station KCLD(FM), St. Cloud, Minnesota (Channel 284CC). The Commission required that applications filed between March 1, 1984 and March 2, 1987 protect an additional 16 kilometer buffer zone around those Class C stations operating with less than 100 kW ERP and 300 meters HAAT. This action was taken so as to afford these stations an opportunity to upgrade to meet the new minimum Class C requirements. *See Memorandum Opinion and Order* in BC Docket No. 80-90, 49 Fed. Reg. 10,260 (March 20, 1984). Southern Twin's proposal was required to meet the spacing requirement of 105 kilometers imposed by 47 C.F.R. § 73.207(a), plus the additional 16 kilometer buffer zone, for a total of 121 km separation to protect KCLD. The proposal, however, specifies only a 120.2 km separation to KCLD. In its *Report and Order* in MM Docket No. 84-750, 50 Fed. Reg. 19936 (May 13, 1985), the Commission adopted new "hard look" procedures for the processing of FM broadcast applications. However, the *Report and Order* made no substantive change in existing policy governing acceptability as defined in 47 C.F.R. § 73.3566(a) which states, in pertinent part, that applications "patently not in accordance with the FCC rules, regulations, or other requirements, unless accompanied by an appropriate request for waiver, will not be accepted for filing." Southern Twin did not request a waiver of 47 C.F.R. § 73.207. *See Stevens Point Communications Corporation*, 2 FCC Rcd 1747, 1748 (1987); *Teton Broadcasting Limited Partnership*, 1 FCC Rcd 518, 521 n.5 (1986). Consequently, Southern Twin's application must be dismissed.

3. *LBI.* On January 6, 1988, LBI submitted an amendment in response to a December 11, 1987 letter from the Chief, FM Branch, giving the applicant 30 days to submit a curative amendment specifying a fully-spaced site pursuant to *Trend Broadcasting, Inc.*, 18 FCC 2d 749 (1969), and the guidelines articulated in *Donovan Burke*, 104 FCC 2d 843 (1986). We note that acceptance of LBI's amendment is permitted only because the applicant requested a waiver of 47 C.F.R. § 73.207 in its *original* application.[2] Accordingly, the January 6, 1988 amendment will be accepted as indicated in paragraph 5 below.

4. *LBF.* In response to Section VI of FCC Form 301, LBF has indicated that it will employ five or more full-time employees. Therefore, LBF is required to submit the five-point Model Equal Employment Opportunity (EEO) Program (FCC Form 396A). The guidelines to the Model EEO Program, paragraph IV, instruct the applicant to specify the recruitment sources that the applicant proposes to use in recruiting minority and female employees. LBF has not provided these specific recruitment sources in its EEO Program. Accordingly, LBF shall amend its application within 30 days of the release of this Order by submitting specific sources of minority and female recruitment to the presiding Administrative Law Judge.

5. *Other matters.* The applicants below have petitioned for leave to amend their applications on the dates shown below. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under 47 C.F.R. § 1.65, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

APPLICANTS	AMENDMENTS FILED
OEB	December 28, 1987
LBI	January 6, 1988 (Engineering)

6. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the applicants below have been unsuccessful. Accordingly, since no determination has been received as to whether the antennas proposed by Gjovik and LBF would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to 47 C.F.R. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by the following applicants would constitute a hazard to air navigation: Gjovik, LBF.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That the application filed by Southern Twin IS HEREBY DISMISSED.

11. IT IS FURTHER ORDERED, That pursuant to paragraph IV (recruitment) of the applicant's Model EEO program, LBF shall file with the Administrative Law Judge, within 30 days of the release of this Order, data providing the minority and female recruitment sources that it proposes to utilize in filling job vacancies.

12. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by the following applicants ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein: OEB, LBI.

13. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

14. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

15. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, not later than **April 13, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

16. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner therein prescribed, and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] The application of Abacus Lakeville Broadcasting, (File No. BPH-860317NP), was dismissed by a November 3, 1987 letter from the Chief, FM Branch.

[2] As noted above in paragraph 2, however, Southern Twin failed to make the appropriate waiver request in its original application and, consequently, its opportunity to amend under the *Trend* policy is precluded.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 83-670

In the Matter of

Revision of Programming and
Commercialization Policies,
Ascertainment Requirements, and
Program Log Requirements for
Commercial Television Stations

ORDER ACCEPTING LATE-FILED COMMENTS

Adopted: March 11, 1988; Released: March 23, 1988

By the Chief, Mass Media Bureau:

1. On October 20, 1987, the Commission adopted a *Further Notice of Proposed Rule Making / Notice of Inquiry* in the above-captioned proceeding, FCC 87-338, summarized at 52 Fed.Reg. 44616 (November 20, 1987), requesting comments regarding children's television commercialization guidelines and other closely related issues. Therein, the Commission established January 4, 1988 and February 19, 1988 as the dates by which comments and reply comments, respectively, could be filed. On December 4, 1987, the Commission extended the dates for filing comments and reply comments to February 19, 1988 and April 4, 1988, respectively.

2. On March 4, 1988, the Commission received late-filed comments in the above-captioned matter from the Office of Communication of the United Church of Christ (UCC) and the United States Catholic Conference (USCC). Simultaneous with submission of their comments, the UCC petitioned the Commission to accept their comments out of time. Also, on February 22, 1988 late-filed comments were received from CBS, Inc. (CBS) and Telecommunications Research and Action Center (TRAC). CBS and TRAC also petitioned the Commission to accept their comments out of time.

3. In the interest of establishing a thorough and comprehensive record in this proceeding, we are accepting all of these comments and have incorporated them into the public record of this proceeding. In view of the lengthy period provided for the filing of replies in this proceeding and because more than three weeks remain in that period, we are not extending the date for the filing of replies in response to the above-referenced late-filed comments.

4. Accordingly, IT IS ORDERED that the motions of CBS, Inc., Telecommunications Research and Action Center and the Office of Communication of the United Church of Christ for acceptance of late-filed comments in this proceeding ARE GRANTED. In addition, IT IS ORDERED, that the late-filed comments of the United States Catholic Conference in this proceeding ARE ACCEPTED. This action is taken pursuant to authority provided in Section 4(i) of the Communications Act of 1934, as amended, and Section 0.283 of the Commission's rules.

5. For further information concerning this proceeding, contact Eugenia R. Hull, (202) 632-6302.

FEDERAL COMMUNICATIONS COMMISSION
Alex D. Felker
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COMMUNICATIONS MANAGEMENT, INC.

File No. I-T-C-88-049

Application for authority to operate as an international resale carrier

ERRATUM

Released: March 24, 1988

By the Acting Chief, International Facilities Division:

1. The captioned Order, Authorization and Certificate, released February 22, 1988 (DA 88-176), granted authority to resell switched message telephone service of AT&T, MCI and US Sprint for provision of switched message telephone service. The applicant was inadvertantly identified as Communications Management, Inc. It should be Marsch Communications Management, Inc.

2. Accordingly, the captioned Order should be changed to reflect the entire name of the applicant, Marsch Communications Management, Inc.

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS, Complainant,	File Nos. E-87-117, E-87-118, E-87-119, E-87-120, E-87-121, E-87-122, E-87-123, E-87-124,
v.	E-87-125, E-87-126, E-87-127, E-87-128, E-87-129, E-87-130,
BISON STATE TELEPHONE COMPANY, INC., *et al.* Defendant.	E-87-131, E-87-132, E-87-133, E-87-134, E-87-135, E-87-136 and E-87-137

ORDER

Adopted: March 15, 1988; Released: March 24, 1988

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On June 30, 1987, AT&T Communications (AT&T) filed formal complaints against Contel Corporation's telephone operating subsidiaries (Contel Companies) alleging that (a) the Contel Companies' billing and collection rates for the period July 1, 1985, to December 31, 1986, were unjust, unreasonable and unlawful in violation of Sections 201, 202 and 205 of the Communications Act, 47 U.S.C. §§ 201, 202, 205, and Commission precedent, and (b) the Contel Companies' earnings for the period October 1, 1985, to December 31, 1986, for billing and collection services provided to AT&T exceeded the authorized rate of return established in *Authorized Rates of Return for the Interstate Services of AT & T Communications and Exchange Telephone Carriers*, CC Docket No. 84-800, *Phase* I, FCC 85-527 (released September 30, 1985), Phase I Reconsideration, FCC 86-114 (released March 24, 1986).

2. The parties have been conducting discussions, including consultations with members of the Enforcement Division, aimed at settling the complaint. A mutually agreeable settlement of all pending controversies between the parties was reached. On March 3, 1988, counsel for AT&T and Contel Corporation filed a joint motion to dismiss the complaint with prejudice and to terminate these proceedings. We have reviewed the subject agreement and conclude that dismissal of the complaint will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated under 47 C.F.R. § 0.291, that the proposed settlement agreement of the parties IS AUTHORIZED.

4. IT IS FURTHER ORDERED that the joint motion to dismiss the above-referenced complaint IS GRANTED with prejudice.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TRT INTERNATIONAL, INC. File No. I-T-C-88-066

Application for authority to lease and operate facilities for service to Argentina

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: March 14, 1988; Released: March 24, 1988

By the Acting Chief, International Facilities Division:

1. The above-captioned application, filed on January 12, 1988 by TRT International, Inc. (TRTI), requests authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to lease and operate satellite and connecting facilities for provision of switched message telephone service between the U.S. and Argentina and beyond. The application was placed on public notice on January 27, 1988. No comments were received. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of switched message telephone service to Argentina by TRTI.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-88-066 IS GRANTED, and TRTI is authorized to:

a. lease from Comsat and operate eight voice-grade satellite circuits between the Etam, West Virginia earth station and an appropriate satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and an earth station in Argentina furnished by TRTI's correspondent Entel Argentina;

b. lease and operate eight voice-grade circuits in the Etam, West Virginia earth station and eight voice-grade circuits between the earth station and TRTI's New York City operating office; and

c. use said facilities to provide switched message telephone service between the U.S. and Argentina and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to insure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between TRTI and its correspondet in Argentina, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. This authorization is effective on its release date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

6. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TRT INTERNATIONAL, INC. File No. I-T-C-88-065

Application for authority to acquire and operate facilities for service to Venezuela

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: March 14, 1988; Released: March 24, 1988

By the Acting Chief, International Facilities Division:

1. The above-captioned application, filed on January 14, 1988 by TRT International, Inc. (TRTI), requests authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire and operate cable and connecting facilities for provision of switched message telephone service between the U.S. and Venezuela. The application was placed on public notice on January 27, 1988. No comments were received. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of switched message telephone service to Venezuela by TRTI.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-88-065 IS GRANTED, and TRTI is authorized to:

a. lease and operate eight voice-grade circuits between the Vero Beach, Florida, the Third Florida-St. Thomas cablehead, and TRTI's New York operating office; and

b. operate eight voice-grade half circuits in the Third Florida-St. Thomas and Second St. Thomas-Venezuela cables acquired by TRT Telecommunications Corporation; and

c. use said facilities to provide switched message telephone service between the U.S. and Venezuela and beyond.

3. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between TRTI and its correspondent in Venezuela, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

4. This authorization is effective on its release date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

5. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-102

In re Applications of

BLAIR BROADCASTING CORPORATION (hereafter Blair) File No. BPH-861114MA

GRINNELL BROADCASTING CO., INC. (hereafter Grinnell) File No. BPH-861126MO

For Construction Permit
for a New FM Station on Channel 294A
in Grinnell, Iowa

HEARING DESIGNATION ORDER

Adopted: February 25, 1988; Released: March 24, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Blair*. In response to Section VI of FCC Form 301, Blair has indicated that it will employ five or more full-time employees. Therefore, it is required to submit the five-point Model Equal Employment Opportunity (EEO) Program (FCC Form 396A). The guidelines to the Model EEO Program, paragraph IV, instruct the applicant to specify the recruitment sources that it proposes to use. Blair has not provided specific minority recruitment sources in its EEO program. Applicant shall amend its application within 30 days of the release of this Order by submitting specific sources of minority recruitment to the presiding Administrative Law Judge.

3. The applicant below has petitioned for leave to amend its application on the date shown. The accompanying amendment was filed after January 23, 1987, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

APPLICANT	AMENDMENT FILED
Blair	3/11/87

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That pursuant to Section IV (recruitment) of its Model EEO Program, Blair shall file within 30 days of the release of this Order data providing the minority recruitment sources it proposes to utilize in filling job vacancies with the presiding Administrative Law Judge.

7. IT IS FURTHER ORDERED, That the petition for leave to amend filed by the following applicant IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein: Blair

8. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

9. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **April 14, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-106

In re Applications of

LEEMAY BROADCASTING SERVICES, INC. (hereafter Leemay) BPH-870304MB

GARY SCOTT LANIER (hereafter Lanier) BPH-870309MH

QUINTON D. BURGE, JR. (hereafter Burge) BPH-870309MJ

For Construction Permit for
a New FM Station,
Ketchum, Oklahoma, Channel 298C2.

HEARING DESIGNATION ORDER

Adopted: February 29, 1988; Released: March 24, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.[1]

2. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. *EEO*. In response to Section VI of FCC Form 301, Leemay has indicated that it will employ five or more fulltime employees. Therefore, it is required to submit the five-point Model Equal Employment Opportunity (EEO) Program (FCC Form 396A). The guidelines to the Model EEO Program, paragraph IV, instruct the applicant to specify the sources that it proposes to use in recruiting minority and female applicants. Leemay has not provided specific sources of minority (American Indians make up 11.1 percent of the available workforce in Craig County, Oklahoma) recruitment in its EEO program. Accordingly, Leemay will be required to file an amended EEO program with the presiding Administrative Law Judge within 30 days of the release of this Order, or an appropriate issue will be specified by the Judge.

4. *Late filed amendments*. The applicant below has petitioned for leave to amend its application on the date shown. The accompanying amendment was filed after the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

APPLICANT	DATE AMENDMENT FILED
Leemay	December 23, 1987

5. On April 13, 1987, pursuant to Section 73.3522(a)(6), Leemay filed an amendment to state "that the proposed station will have a complete emergency power system to assure continued operation." Further on October 22, 1987, Leemay, again pursuant to 47 C.F.R. Section 73.3522(a)(6) filed an amendment which proposes that it "will have complete auxiliary power system to assure continued operation in the event an emergency." This latter citation is incorrect, because Section 73.3522(a)(6) limits the time for amendments to be filed to a 30-day period following release of a notice of tenderablity, which in this case was released on April 2, 1987. Because it is late-filed and not accompanied by a petition for leave to amend, and because the same amendment has been timely filed on April 13, 1987, the October 22 amendment will be returned.

6. *Burge*. During the course of a preliminary engineering study, the staff ascertained that the the applicant failed to notify the Federal Aviation Administration of the proposed construction of the specified tower. Since no determination has been received from the FAA as to whether the antenna proposed by Burge would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

7. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for consolidated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That pursuant to 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to applicant Burge, whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

2. To determine, which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced, pursuant to the foregoing issues, which of the applications, if any, should be granted.

9. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Leemay shall submit data relative to paragraph IV of its Model EEO Program as specified in paragraph 3 above, with the presiding Administrative Law Judge.

10. IT IS FURTHER ORDERED, That the December 13, 1987 petition for leave to amend filed by Leemay IS GRANTED and the corresponding amendment IS ACCEPTED to the extent herein; and that the October 22, 1987 amendment filed by Leemay IS RETURNED.

11. IT IS FURTHER ORDERED, That, the Federal Aviation Adminstration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

12. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsquent to the date of adoption of this Order shall be served on the Chief, Data Management Branch, Audio Services Division, Mass Media Bureau.

13. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein, shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **April 14, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

14. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay
Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] The application of Brite-Lite Broadcasting (file no. 870309MK) was dismissed by letter of September 2, 1987.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-101

In re Applications

THREE STATES BROADCASTING, CO., INC. (hereafter Three States) — File No. BPH-861112MK

HOMETOWN BROADCASTING OF MATEWAN (hereafter Hometown) — File No. BPH-861125MD

For a New FM Station
In Matewan, West Virginia
At Channel 294A

HEARING DESIGNATION ORDER

Adopted: February 23, 1988; Released: March 24, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

5. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

6. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **April 14, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

7. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-104

In re Applications

TONY J. TRUNKEL (hereafter Trunkel) File No. BPH-861203MD

PHYLLIS RICE (hereafter Rice) File No. BPH-861203MG

For a Construction Permit
for a New FM Station
in Tomah, Wisconsin on
Channel 241A (96.1 MHz)

HEARING DESIGNATION ORDER

Adopted: February 23, 1988; Released: March 24, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Trunkel. Trunkel has indicated that he will terminate his position as an engineer at radio station WVCX(FM), Tomah, Wisconsin, in the event of a grant of the instant application. Accordingly, an appropriate condition will be specified below.

3. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted, if any.

5. IT IS FURTHER ORDERED, That in the event of a grant of Trunkel's application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the station authorized herein, permittee shall certify to the Commission that Tony J. Trunkel has terminated his employment at WVCX(FM), Tomah, Wisconsin.

6. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

7. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, not later than **April 14, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

8. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-112

In re Applications of

HEARTLAND COMMUNICATIONS, INC. (hereafter Heartland) File No. BPH-870306KB

JAMIE WHITLOCK (hereafter Whitlock) File No. BPH-870312MK

RONALD H. LIVENGOOD (hereafter Livengood) File No. BPH-870313MB

WASHINGTON-MARION SOUND CORP. (hereafter Washington-Marion) File No. BPH-870313MG

David L. Cunningham d/b/a CUNNINGHAM COMMUNICATIONS (hereafter Cunningham) File No. BPH-870313NC

For Construction Permit for
New FM Station, Channel 274A, 102.7MHz
Springfield, Kentucky

HEARING DESIGNATION ORDER

Adopted: March 7, 1988; Released: March 24, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Whitlock*. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the applicant have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Whitlock would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

3. *Other Matters*. A petition for reconsideration for a new FM allocation at Burkeville, Kentucky (Report No. 1692, dated November 25, 1987) is currently pending. If the petition is granted, short spacing will result with all of the Springfield applications except Washington-Marion. In this event, Heartland, Whitlock, Livengood and Cunningham will be required to file appropriate amendments to their applications with the presiding Administrative Law Judge. No comparative advantage will be permitted from these amendments.

4. The applicant below has petitioned for leave to amend its application on the date shown. The accompanying amendment was filed after the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

APPLICANT	AMENDMENT FILED
Heartland	September 22, 1987

5. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Whitlock would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Heartland IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein: September 22, 1987.

10. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

11. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later

than **April 14, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-618

In the Matter of

Amendment of Section 73.202(b), RM-6133
Table of Allotments.
FM Broadcast Stations.
(Fort Rucker, Alabama)

ORDER GRANTING EXTENSION OF TIME FOR FILING COMMENTS AND REPLY COMMENTS

Adopted: March 15, 1988; Released: March 24, 1988

By the Deputy Chief, Policy and Rules Division:

1. By *Notice of Proposed Rule Making*, 53 FR 3762, published February 9, 1988, the Commission proposed to delete FM Channel 226A at Fort Rucker, Alabama,[1] at the request of the United States Army Aviation Center (Army). The period for filing initial comments and replies expires on March 21, 1988 and April 5, 1988, respectively.

2. On March 11, 1988, counsel for Cheryl Swaim (Swaim), who is described as an intended applicant for Channel 226A at Fort Rucker, requested an extension of time for filing comments and replies to April 7, 1988 and April 21, 1988, respectively. According to Swaim, although the *Notice* herein proposed to delete Channel 226A at the Army's request due to an alleged serious hazard it would create to military traffic in the existing air corridor around Fort Rucker, a site has been located which she claims will not interfere with air navigation in that area.

3. Since the window period for filing applications on Channel 226A at Fort Rucker closes on April 7, 1988, Swaim asserts that it would be prejudicial, at this juncture, to disclose her site, or other pertinent details, before filing an application therefor.

4. Pursuant to the provisions of Section 1.46(a) of the Rules, there is a Commission policy against the routine grant of extension requests. In this case, however, we believe that Swaim has provided a sufficient showing to warrant granting the brief extension of time since it will provide coordination of the filing dates in each instance. Grant of the requested extension will benefit the public interest since it will assure the development of a sound and comprehensive record on which to base our decision, and will not measurably delay resolution of the proceeding. We shall extend the comment date in the proceeding to April 8, 1988, in order to allow Swaim to incorporate by reference her application for Channel 226A in comments she intends to file in this proceeding. We shall also extend the reply comment date one additional day beyond the date requested by Swaim.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That the request for extension of time filed on behalf of Cheryl Swaim IS GRANTED, and the time for filing comments and reply comments in the above-captioned proceeding IS EXTENDED to **April 8, 1988** and **April 22, 1988, respectively.**

6. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] Channel 226A was allotted to Fort Rucker in MM No. Docket 84-231, and was the 57th channel selected for processing. The availability of Channel 226A was announced in Report No. W-35 (*Public Notice* released February 26, 1988). Therein, the Commission gave notice that Channel 226A has been proposed for deletion at Fort Rucker in the above-captioned docket.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-463

Refinement of Procedures
and Methodologies for
Represcribing Interstate
Rates of Return for
AT&T Communications and
Local Exchange Carriers

MEMORANDUM OPINION AND ORDER

Adopted: February 25, 1988; Released: March 24, 1988

By the Commission:

I. INTRODUCTION

1. In 1984 this Commission initiated a proceeding to develop new methods and procedures for prescribing an interstate rate of return. [1] That proceeding was subsequently expanded to develop rules for the enforcement of rate of return prescriptions.[2] In a multi-phased proceeding, this Commission adopted rate of return enforcement rules,[3] established new procedures and methodologies for represcribing rates of return,[4] and applied those rules in setting authorized returns for the 1987-1988 earnings review period.[5] This present Rule Making was initiated to refine the procedures and methodologies for setting interstate rates of return in light of experiences with the initial represcription and changes since that time.

2. The Notice of Proposed Rule Making (NPRM)[6] raised several issues: carrier groupings and waiver standards for exclusion from the groupings; new methodologies for estimating the cost of equity; revisions to the comparable firms analysis; refinements to the discounted cash flow (DCF) methodology for estimating the cost of equity; procedural issues related to petitions for reconsideration and the timing of data submissions; and the expansion of the represcription and earnings review period from two years to three years. This decision will address only the represcription schedule.[7] The additional issues will be addressed at a later point in time.

3. The NPRM sought comment on the advisability of extending the rate of return interval from two to three years, either as a permanent change or only for the current interval. 2 FCC Rcd at 6495. The NPRM noted that a significant number of regulatory changes would all become effective on January 1, 1988, the midpoint of the earnings review period, including a revised Uniform System of Accounts (USOA), a new Separations Manual, numerous separations changes, and several Part 69 modifications. We expressed concern that the number, magnitude and timing of the modifications "may affect a carrier's opportunity to earn a fair return." *Ibid.*

II. COMMENTS OF THE PARTIES

4. The comments filed by the parties overwhelmingly supported extension of the represcription and earnings review period from two to three years, at least for the current period. Some thirty parties filed comments initially, with seventeen of the commentors addressing the issue of extending the represcription and earnings review period.[8] Only one party, Alltel, objected to the addition of 1989 to the current earnings review period.[9]

5. The commentors agree with the observation in the NPRM, that the numerous January 1, 1988 changes to the accounting, separations and access rules, are likely to make accurate targeting of new tariff rates difficult. [10] Several commentors also assert that other issues affecting accounting and separations are likely to be resolved in the current enforcement period, further complicating the complex task of setting rates.[11] Included among these additional issues are Commission proceedings addressing the amendment of Part 65 to prescribe components of rate base and net income, the separations treatment of commercial and marketing expenses, the investigation of market pricing of special access, the amortization of depreciation reserve deficiencies, and the consolidation of central office equipment categories.

6. In addition to the problems likely to arise in 1988 with forecasting interstate expenses, the commentors contend that other factors support the one year addition to the current earnings review period. Several parties observe that the extra year will provide this Commission and the carriers a better opportunity to resolve the other complex rate of return refinement issues raised in the NPRM, citing the lack of consensus on, *inter alia*, the cluster analysis and capital asset pricing model (CAPM) methodologies.[12] Commentors also argue that the additional time will allow the Commission to address important rate of return questions that were omitted from the NPRM, including enforcement categories and increments. [13] Finally, several parties contend that deferring the represcription proceeding would allow the Commission to coordinate the rate of return proceeding with the Commission's proposal to adopt price caps, which could render a rate of return represcription unnecessary.[14]

7. A number of the commentors also bolster their support for the extension by citing the volatility recently experienced in the capital markets.[15] Commentors observe that the extraordinary decline in the stock market on October 19, 1987 is but the most dramatic example of the fluctuations that have been occurring over the last year. Rapid increases and decreases in stock prices and interest rates impact rate of return represcriptions in two ways. First, the parties argue that the extension of the earnings review period could allow an opportunity for the markets to settle down, making it easier for this Commission to select the rate of return for an upcoming period.[16] Second, the volatility in the stock market has upset, to some extent, the traditional risk-return relationships underlying the return on equity methodologies used by this Commission. [17] Additional time would allow greater exploration of these new relationships and methodologies to estimate costs of capital if the market does not return to "normalcy."

III. DISCUSSION

8. Although this Commission adopted an interval for rate of return represcriptions that coincides with the enforcement monitoring period in the Part 65 rules, the two processes have not always been linked. We used an annual period to measure AT&T compliance with its rate of return prescription prior to the adoption of the Part 65 rules.[18] We did not change the represcription on an annual basis at that time. AT&T prescriptions usually remained in place for several years. We are still following a similar procedure for Comsat.[19] Thus, it would clearly be possible to adopt a monitoring or enforcement period that is shorter than the interval between represcriptions.

9. A monitoring or enforcement period that includes portions of two or more prescription periods might create some administrative problems, but such problems do not appear to be insoluble. In these circumstances, it is possible for us to determine whether the next represcription should be deferred without reaching a simultaneous decision with respect to an enforcement period or any other enforcement question.

10. We have decided that it would be desirable to limit our decision in this order to the represcription schedule. That question is clearly more urgent than the enforcement period question. The deadlines for submission of data and pleadings for a 1988 represcription proceeding are imminent. The Part 65 rules do not require the submission of a final compliance report for a 1987-88 monitoring or enforcement period until September 30, 1989.

11. The Court of Appeals for the District of Columbia Circuit has recently issued an opinion remanding our Phase I rate of return enforcement decision for further Commission proceedings.[20] Although the Court's mandate has not yet issued, this development leads us to conclude that it would not be desirable to address any enforcement question at this time.

12. We have decided to defer rate of return represcription for AT&T and local exchange carriers to produce a represcription that would take effect in January 1990.[21] Our preliminary review of the comments relating to methodologies clearly indicates that any refinements will require more study. It would not be possible for us to introduce refinements that can be implemented in a represcription proceeding that is designed to produce a represcription that could be reflected in tariff rates in January 1989. A one-year deferral of the represcription proceeding is desirable to afford us with sufficient time to develop better represcription procedures.

13. We would conduct a represcription in spite of those problems if we had reason to believe that delaying a represcription would prejudice the interest of consumers. The information that is available to us indicates that this is not the case. The evidence in this record and other publicly available economic and financial data[22] support continuation of the currently prescribed maximum rates of return for the third year. Several carriers provided information demonstrating that long-term interest rate levels at present are at or above the levels when this Commission set the carriers' rates of return in 1986.[23] In light of the relationship between interest rates and the cost of equity, these data support the continuing reasonableness of the currently authorized maximum rates of return.[24] Other parties submitted evidence, based on CAPM and comparable firm studies, that shows current carrier cost of capital estimates equal to or higher than the prescribed interstate rates of return.[25]

14. To some extent, the carrier cost of capital evidence supplied by the carriers was conclusory. Our independent analysis of economic conditions and carrier costs of capital confirms that current cost of capital estimates are about equal to similar estimates relied on by this Commission during the last represcription. Utilizing the classic DCF methodologies relied on heavily by this Commission previously, we computed overall cost of capital estimates based on recent data, which we then compared to corresponding numbers from the Phase III Order.[26] While the results were somewhat sensitive to the particular period over which stock prices were measured, the current estimates were very close to the Phase III estimates. Moreover, we note that no parties filed comments suggesting that the currently authorized rates of return are unreasonable in light of existing market conditions.

15. The record clearly demonstrates that numerous benefits would accrue from extending the current prescription period to include 1989. In light of the evidence in the record, as well as our own studies based on publicly available data, we also find that it would be reasonable to continue the currently prescribed interstate rates of return throughout a three year period encompassing 1987-1989. In view of our decision to extend the prescription, we would expect that fewer midcourse corrections will be needed during the remainder of the current represcription period.

IV. CONCLUSION

16. Accordingly, IT IS ORDERED, that Section 65.102(c) is suspended for a period of one year until January 3, 1989, insofar as it requires filing of carrier rate of return submissions.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

FOOTNOTES

[1] Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, CC Docket No. 84-800, FCC 84-395, released August 13, 1984, (84-800 NPRM) at paras. 2-4.

[2] Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, CC Docket No. 84-800, 50 Fed. Reg. 33786 (August 21, 1985) (SNPRM).

[3] Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, CC Docket No. 84-800, Phase I, FCC 85-527, released September 30, 1985 (Phase I Order), *reconsideration*, FCC 86-114, released March 24, 1986, *further reconsideration*, FCC 86-544, 2 FCC Rcd 190 (January 14, 1987), *remanded*, AT&T v. FCC, No. 85-1778 (D.C. Cir. January 22, 1988).

[4] Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, CC Docket No. 84-800, Phase II, FCC 85-645, released December 20, 1985 (Phase II Order), *reconsideration*, FCC 86-353, 104 FCC2d 1404 (1986).

[5] Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, CC Docket No. 84-800, Phase III, FCC 86-354, released August 25, 1986 (Phase III Order), *recon. denied* FCC 87-280, 2 FCC Rcd 5636 (September 22, 1987).

[6] Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T Communications and Local Exchange Carriers, CC Docket No. 87-463, 2 FCC Rcd 6491 (October 13, 1987).

[7] In an earlier decision, the Bureau changed the filing date for the initial carrier submissions from January 4, 1988, to February 29, 1988. Southwestern Bell Telephone Company et al., Petitions for Waiver of Section 65.102, DA 87-1785, FCC Rcd (released December 10, 1987). That opinion expressly reserved judgment on the issue being decided today -- extension of the current represcription and earnings review period to include 1989. *Id.* at para. 17.

[8] In addition, 23 parties filed reply comments, with fifteen of those parties addressing the extension question. None of the parties filing reply comments opposed the addition of 1989 to the earnings review period.

[9] Alltel Comments at p. 40. Several parties, however, objected to a permanent three year earnings review period or suggested that additional study was necessary. E.g., Centel Comments at pp. 9-10; Cincinnati Bell Comments at p. 19; Ameritech Comments at App. C; Pacific Telesis Comments at p. 3; Rochester Comments at p. 7; USTA Comments at p. 31; OPASTCO Reply Comments at p. 7; Contel Reply Comments at pp. 5-6; Telephone & Data Systems Reply Comments at p. 17. Only BellSouth argued in favor of a permanent change to a three year earnings review period, while the remaining commentors supported a one-time extension but were silent on this question for the period beyond 1989.

[10] *E.g.*, USTA Comments at p. 31; Southwestern Bell Comments at p. 7; GTE Comments at p. 32; US West Comments at pp. 38-40; United Telephone Comments at p. 1.

[11] *E.g.*, Ameritech Comments at App. C; SNET Comments at p. 3; Bell Atlantic Comments at p. 16; Pacific Telesis Comments at p. 5.

[12] *E.g.*, US West Comments at pp. 38-40; Bell Atlantic Comments at pp. 18-19; Pacific Telesis Comments at pp. 6-7; USTA Reply Comments at pp. 3-5; Southwestern Bell Reply Comments at p. 4; Centel Reply Comments at p. 4.

[13] *E.g.*, BellSouth Reply Comments at pp. 2-3; Centel Reply Comments at p. 3; Bell Atlantic Reply Comments at pp. 3-5.

[14] *E.g.*, AT&T Comments at p. 4; NYNEX Comments at p. 23; Rochester Comments at p. 7; Cincinnati Bell Comments at p. 18; Pacific Telesis Comments at p. 3; Ameritech Reply Comments at pp. 3-5; Southwestern Bell Reply Comments at p. 3; Telephone & Data Systems Reply Comments at p. 17; BellSouth Reply Comments at pp. 2-3.

[15] *E.g.*, AT&T Comments at pp. 6-7; USTA Comments at p. 33; Southwestern Bell Comments at p. 7; US West Comments at pp. 38-40 and Exh. 1; Centel Reply Comments at p. 5; OPASTCO Reply Comments at p. 7; Cincinnati Bell Reply Comments at pp. 1-2. In addition, Alltel supports its plea to retain the two year earnings review period by referring to the volatility in the capital markets.

[16] Indeed, Southwestern Bell asserts that the addition of a third year would have a calming influence on the stock market.

[17] *See, e.g.*, Southwestern Bell Comments at p. 11.

[18] AT&T, 102 FCC 2d 52 (1984); *affirmed*, New England Telephone and Telegraph Co. v FCC, 826 F 2d 1101 (D.C. Cir. 1987).

[19] *See* , Communications Satellite Corporation, CC Docket Nos. 80-634 and 85-268, FCC 87-388 (released January 28, 1988).

[20] AT&T v FCC, No. 85-1778 (D.C. Cir. January 22, 1988)

[21] We are not determining whether the two year represcription intervals should be changed on a permanent basis. That question can be addressed in a subsequent order.

[22] The other data consists of stock price and dividend information. *See*, n. 26. infra. We shall take notice of such data pursuant to FCC Rules and Regulations, Section 1.351. *See*, Federal Rules of Evidence, Rules 201 and 803(17).

[23] *E.g.*, BellSouth Comments at pp. 3-4; Bell Atlantic Comments at p. 17 and Attachment B; United Comments at p. 2.

[24] *See generally*, Phase III Order at para. 34.

[25] *E.g.*, Ameritech Reply Comments at p. 5.

[26] The return on equity estimates for the Bell regional holding companies (RHCs) were made using the basic discounted cash flow model relied on heavily by this Commission in the Phase III Order: $D(1+G)/P + G$. Stock prices and dividend information were taken from December 1987 Wall Street Journals and averaged over a ten-day period. In computing the overall cost of capital, embedded debt costs and debt-equity ratios were drawn from the most recent 10Q's filed with the SEC. Those estimates of the current cost of capital for the RHCs were then compared to similar estimates from the First Quarter of 1986 relied on in the Phase III Order at para 15. The current estimates do not, of course, reflect any changes in our prescription methodologies, which are under review in this proceeding. We believe that use of the basic discounted cash flow model to generate estimates for comparative purposes is a reasonable approach. Indeed, it is to ensure more precise prescription methodologies that we are extending existing prescriptions for one year.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

Nancy C. Hart and the Estate of Stephen J. Mewhort d/b/a PACIFIC TELEVISION, LTD. — **MM DOCKET NO. 84-680** File No. BPCT-840202KG

OBISPO TELEVISION — **MM DOCKET NO. 84-681** File No. BPCT-840202KH

COMMUNITY MEDIA CORPORATION — **MM DOCKET NO. 84-682** File No. BPCT-840202KI

For Construction Permit
for New UHF Television Station,
San Luis Obispo, California

MEMORANDUM OPINION AND ORDER

Adopted: March 14, 1988; Released: March 24, 1988

By the Commission:

1. Before the Commission are: (a) Applications for Review of the Review Board's Decision herein filed by Nancy C. Hart and the Estate of Stephen J. Mewhort d/b/a Pacific Television, Limited Partnership (Pacific) on April 3, 1987 and by Obispo Television (OTV) on April 2, 1987, respectively, (b) an Opposition to Applications for Review filed by Community Media Corporation (CMC) on April 21, 1987 and (c) a Motion to Dismiss filed by Pacific on January 12, 1988. The applications for review and the opposition thereto relate to a decision of the Review Board granting CMC's application for a new commercial UHF television station in San Luis Obispo, California. 2 FCC Rcd 1101 (Rev. Bd. 1987).

I. BACKGROUND

2. Pacific, OTV and CMC are the remaining applicants for a new UHF television station in San Luis Obispo, California. In an Initial Decision in this proceeding, Administrative Law Judge Joseph Stirmer (ALJ) concluded CMC is the superior applicant on the basis of 100 percent integration of ownership into management. Pacific was awarded 50 percent and OTV 66-2/3 percent integration credit. FCC 86D-43 (released Jul. 2, 1986). In its Decision, the Review Board agreed with the ALJ that, even though no subscription agreements were initially signed by the shareholders, CMC was entitled to 100 percent integration credit. 2 FCC Rcd at 1103 ¶¶ 15-25. The Board, however, refused to give any credit for either Pacific's or OTV's integration proposal, as it considered each to be a sham. 2 FCC Rcd at 1101 ¶¶ 2-11, 1103 66 12-14.

II. PACIFIC TELEVISION

3. Pacific has filed a motion to dismiss its application with prejudice. Attached to its motion is a declaration of no consideration pursuant to 47 C.F.R. § 73.3525.[1] We grant Pacific's motion to dismiss and dismiss its application for review. By taking this action, consideration of Pacific's application for review is obviated.

III. OBISPO TELEVISION

4. We will also deny OTV's application for review. OTV is a general partnership with three equal partners. The partnership was formed on the basis of an oral agreement before the filing of the application. A one-page written partnership agreement was executed well after both the "B" cut-off date and the exchange date for integration and diversification statements, but before hearing. 2 FCC Rcd at 1103 ¶ 12. The written agreement was only three sentences long but specified that all partnership decisions must be unanimous. One of the partners, Ms. Bassford, the proposed full-time station manager of OTV, testified that she thought that partnership action required only a majority vote. 2 FCC Rcd at 1103 ¶ 14.

5. Notwithstanding the agreement, Ms. Bassford did not participate in any partnership decision-making. Tr. at 220-22. She did not even see the OTV application before it was filed with the FCC, and she probably saw the application for the first time the day before the evidentiary hearing. 2 FCC Rcd at 1103 ¶ 14. Moreover, while the agreement specifically required equal equity contributions, her share had been paid by one of the other partners, her brother, whom she is to reimburse at some unspecified future time. *Id.* The Board found that the acts of the partners were inconsistent with OTV's integration proposal and therefore that there was no reasonable assurance that the proposal would be carried out. *See Bradley, Hand & Triplett*, 89 FCC 2d 657, 662 (Rev. Bd. 1982). Thus, the Board correctly determined OTV to be a sham not entitled to any ownership integration credit.

IV. COMMUNITY MEDIA CORPORATION

6. We will affirm the Board's grant of CMC's application. CMC filed its articles of incorporation on February 1, 1984. Its application, filed with the FCC on February 2, 1984, showed stock ownership among its three principals of 55 percent, 25 percent and 20 percent. 2 FCC Rcd at 1103 ¶ 15. On April 17, 1984, CMC filed a form with the State of California reporting that its shares of stock would be issued to the same three people indicated in the FCC application. 2 FCC Rcd at 1103 ¶ 16. On February 18, 1984, CMC filed another document with the State of California indicating that its officers and directors would be the people identified in the FCC application. *Id.* The record showed that all three principals had orally agreed to distribute the shares of stock as set out in the FCC application. 2 FCC Rcd at 1103 ¶ 17. However, no subscription agreements had been executed by any of the proposed shareholders until after the hearing, nor was there an agreement as to when the stock would be purchased and at what price. *Id.*

7. OTV argues that the failure of CMC's principals to execute binding stock subscription agreements should preclude it from receiving any integration credit, citing *Houston Family TV Ltd.*, 101 FCC 2d 661 (Rev. Bd. 1985). The applicant in *Houston Family* tried to establish its owner-

ship proposal with documents executed after the pertinent comparative date. In contrast, CMC prepared and filed contemporaneous public documents in California before the "B" cut-off date which the ALJ found corroborated credible oral testimony establishing that CMC's proposal was genuine and would be fully implemented. 2 FCC Rcd at 1104 ¶ 24. We agree with the Board that CMC provided reasonable assurance that its integration proposal will be carried out and that the Board's holding in *Houston Family* is not applicable to this case.

V. ORDER

8. ACCORDINGLY, IT IS ORDERED, That pursuant to 47 C.F.R. § 73.3568, the Motion to Dismiss filed by Nancy C. Hart and the Estate of Stephen J. Mewhort d/b/a Pacific Television Limited Partnership on January 12, 1988 IS GRANTED; the application of Nancy C. Hart and the Estate of Stephen J. Mewhort d/b/a Pacific Television Limited Partnership (File No. BPCT-840202KG), IS DISMISSED; the Application for Review of Nancy C. Hart and the Estate of Stephen J. Mewhort d/b/a Pacific Television Limited Partnership, filed April 3, 1987 IS DISMISSED, as moot; and the Application for Review of Obispo Television, filed April 2, 1987 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTE

[1] Community Media Corporation submitted a declaration of no consideration pursuant to 47 C.F.R. § 73.3525(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 86-422

In the Matter of

Amendment of the rules regarding	RM-4637
control and security alarm devices	RM-4813
under Part 15	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 9, 1988; Released: March 25, 1988

By the Commission:

INTRODUCTION

1. By this action, the Commission is amending its regulations for control and security alarm devices and other transmitters employing periodic emissions operating under the provisions of Part 15 of the rules. These amendments would (a) establish field strength limits for radiated emissions in the restricted frequency bands[1] above 1000 MHz; and (b) provide an alternative method of determining the average level of emissions from a pulse modulation transmitter.

BACKGROUND

2. The Commission initiated this proceeding in response to four petitions. These included: 1) a petition for rule making, RM-4637, filed on October 5, 1983, by the Door Operator and Remote Controls Manufacturers Association (DORCMA); 2) a petition for rule making, RM-4813, filed on June 12, 1984, by the Security Equipment Industry Association (SEIA); 3) requests for waiver and stay filed on October 12, 1984, by Transcience Industries; and, 4) a petition for partial stay filed on November 21, 1984, by SEIA. Other petitions were also filed and previously acted upon by the Commission. DORCMA, on October 5, 1983, filed a Petition to Stay the Effectiveness of FCC Orders in Docket No. 20990.[2] That petition was granted by the Commission on January 12, 1984, in an Order Granting Partial Stay.[3] The Alarm Device Manufacturing Co., a division of Pittway Corp. (Pittway) filed a Petition for Waiver on November 22, 1983, which was granted by the Commission on January 16, 1984, in an Order Granting Waiver in Part.[4]

3. In response to the petitions, the Commission issued a Notice of Proposed Rule Making (Notice) in the above entitled proceeding.[5] The Notice proposed a relaxation of the emission limit for the restricted frequency bands above 1000 MHz from the current 125 uV/m at 3 meters to 500 uV/m at 3 meters[6]; proposed changing the measurement method for determining the average level of emissions from a pulsed system; and proposed a time frame within which all devices must comply with the proposed regulations. The Notice proposed that all equipment submitted to the Commission for authorization after two years following adoption of a final order in this rule making proceeding must demonstrate compliance with the regulations . Within 30 months of the adoption of a final order in this proceeding, all equipment manufactured must comply with the regulations.

4. Eleven comments and four reply comments were filed in response to the Notice.[7] A list of the commenters is shown in Appendix A. The Commission has also incorporated comments filed by the National Telecommunications and Information Administration, Department of Commerce, (NTIA).[8] Although the NTIA comments were directed to a Commission proposal adopted under Docket No. 87-389[9], the filing also contained comments applicable to the standards proposed in this Notice.

Comments on Emission Limits in the Restricted Frequency Bands

5. The Commission held a public meeting on May 23, 1986, with representatives of many of the manufacturers of control and security alarm devices. The meeting was held to determine the reasons for the wide variation in emission levels that were proposed in the petitions and comments to those petitions relative to operation within the restricted frequency bands above 1000 MHz. This meeting provided a forum for discussion of the problems being encountered by industry in complying with the technical standards. At the meeting, a general consensus was expressed by industry that a field strength limitation of 500 uV/m measured at 3 meters could be economically met by industry and would be sufficient to protect the services allocated in the restricted bands from receiving interference. Based on that determination, the Commission proposed that limitation on the radiated emissions within the restricted frequency bands above 1000 MHz.

6. The comments filed by DORCMA and SEIA, organizations which represent a large percentage of the manufacturers associated with control and security alarm devices, and individual comments filed by Rollins Inc. (Rollins), Pittway, Interactive Technologies Inc. (ITI), and Chamberlain Manufacturing Corporation (Chamberlain) support the proposed limit. Opposition to this limit was received from Genie Home Products, a division of Philips Home Products, Inc. (Genie), Pacific Bell and Nevada Bell (the Pacific Companies), and the National Radio Astronomy Observatory (NRAO) .

7. Genie objects to the proposed limit, stating that a limit of 1000 uV/m at 3 meters should be applied. Genie states that the proposed limit would impose additional costs on the industry without providing offsetting benefits in protection against interference.

8. The Pacific Companies objected to the proposed limit stating that it would cause interference to common carrier microwave operations in the frequency bands above 1000 MHz. However, no cases of interference from any control and security alarm devices to such operations were shown by the commenter.

9. NRAO proposed that the Commission establish a limit of 15 uV/m at 3 meters in those restricted bands above 1000 MHz that are allocated for radio astronomy observations.[10] As an alternative, NRAO stated that the Commission should retain the present limit of 125 uVm at 3 meters within these bands. While NRAO did not document specific cases of interference from existing Part 15

equipment, they do point out that in order to identify sources of interference, the use of tracking equipment with the same level of sensitivity as employed by the radio astronomy receiving sites is required. Thus, equipment capable of finding sources of interference is extremely expensive. Furthermore, NRAO cited CCIR Report 224-5 which states that "[t]he long integration time required to bring the wanted signal out of the noise will mask the characteristic features of the interfering signal. It cannot be recognized as interference and erroneous data result; this type of low-level interference is particularly harmful. Furthermore, because the radio astronomer cannot determine by examination of the data that he has encountered interference, there is no possibility of identifying the source."[11] According to NRAO, interference can be detected only when data is compared with later observations. In addition to affecting the validity of certain studies, NRAO reported that such interference can also prevent studies of very weak radio sources. They further state that radio astronomers are already deterred from undertaking some projects because there is too much man-made interference being received to make the results reliable, even with repeated measurements.

10. NRAO states that the use of a tighter emission limit would reduce the distance at which interference to radio astronomy could occur. They calculate that equipment with an emission level of 15 uV/m at 3 meters at the frequency of 1420 MHz could cause interference to a radio astronomy station at a distance of 13 km. A limit of 125 uV/m increases this distance to 37 km, and a limit of 500 uV/m increases the separation distance to 51 km. Thus, NRAO argues that even though radio astronomy observation centers are remotely located, the separation distance needed at the proposed level of 500 uV/m at 3 meters will permit interference to be received from surrounding population centers.

11. Comments filed by RF Monolithics, Inc. (RFM) and Linear Corporation (Linear) requested that the Commission perform studies to determine if the proposed relaxation to the limit would result in an increased potential for interference to authorized radio services. DORCMA disagreed with their request, stating that such a study would unduly and improperly delay this proceeding to no useful end.

Discussion Regarding Emission Limits in the Restricted Bands

12. The Commission's objective in establishing emission limits in the restricted frequency bands is to minimize the potential for interference to the sensitive radio services authorized to operate in those bands. As stated in Section 15.3 of the regulations, Part 15 devices must not cause interference to the authorized radio services.

13. The standard originally adopted for the restricted frequency bands above 1000 MHz was designed to provide for the operation of the Part 15 devices in a manner which was undetectable by various safety and sensitive radio services authorized in these bands. The level of 125 uV/m at 3 meters is slightly above the detection threshold of conventional measurement equipment above 1000 MHz. Therefore this level would provide for measurement and verification at the emission level. However, many of the manufacturers of control and security alarm devices argued throughout this proceeding that they could not economically comply with such a limit. Some also argued that such a limit was below the general background noise level present in most localities.

14. When specific emission limits are necessary to minimize the potential of the Part 15 devices to interfere with authorized radio services, especially safety services, economic considerations are a lesser concern. In some cases, it is necessary to impose standards that place an economic burden on equipment manufacturers and consumers. The Commission's primary concern in this proceeding is whether or not a limit of 500 uV/m at 3 meters is sufficient to protect the safety and other sensitive radio services authorized to operate within the restricted frequency bands from harmful interference.

15. The Commission has previously requested comments from the Interdepartment Radio Advisory Committee (IRAC) of the NTIA regarding the proposed limit. As a result, NTIA filed comments which are referenced above and are incorporated into this proceeding. In their discussion of general emission limits, the IRAC/NTIA report states that " . . . spurious and receiver emissions should be limited to . . . 500 uV/m at 3 meters above 960 MHz. This is necessary to prevent interference in the future due to inevitable expansion of Part 15 devices . . . "[12] In their discussion on the emission limits for the restricted frequency bands, the IRAC/NTIA report states that . . . "[r]adio astronomy restricted bands . . . should continue to be protected to the 125 uV/m at 3 meters limit."[13]

16. The comments filed by NRAO dealt with emission limitations necessary to protect the radio astronomy bands. They emphasized that large separation distances would be required to prevent interference from control and security alarm devices. However, they did not supply complete details as to how their calculations for determining these separation distances were derived. Instead, they stated that the harmful interference levels shown in CCIR Report 224-5 were used to determine the necessary separation distances. Not stated, however, was that the interference levels shown in the report were based on the interfering signal being within the main beam of the receiving antenna. As stated in that CCIR Report, "[t]he typical radioastronomy antenna has high directivity in order to obtain the best possible angular resolution of the observed sources, and a large collecting area (high gain) for good sensitivity. In modern systems beamwidths on the order of minutes of arc to seconds of arc are used (100 millidegrees-10 millidegrees), corresponding to antenna gains of more than 70 dB." The extremely narrow beamwidth of radio astronomy antennas therefore makes it unlikely that emissions from control and security alarm devices would be detected by the radio astronomy station. Also, emissions at the frequency ranges of concern to NRAO generally are rapidly attenuated by intervening obstructions. Finally, control and security alarm devices normally are installed within enclosures that tend to reduce the level of any radiated emissions in the radio astronomy bands above 1000 MHz.

17. NRAO further indicated that it has been unable to identify specific sources of interference due to the expense of the equipment required to find these sources. Interference could be generated by a number of possible sources, not necessarily control and security alarm devices. Because of this lack of identification of the sources of interference experienced by the NRAO and the low probability that emissions from control and security alarm devices would fall within the main beam of the radio astronomy receiv-

ing antenna, there is insufficient evidence to support NRAO's contention that emissions from control and security alarm devices at the proposed field strength limitation would cause interference to radio astronomy operations. Based on the above, we believe that the proposed level of 500 uV/m at 3 meters is reasonable and is sufficient to protect against interference to operations in the restricted frequency bands. Furthermore, the comments filed by DORCMA and SEIA, representing a large portion of the manufacturers of control and security alarm devices, have indicated that the proposed limits are technically and economically feasible. Thus, the relaxation to the emission limit requested by Genie, 1000 uV/m at 3 meters, can not be justified on the basis of economics and could result in additional interference concerns.

Clarification of Language in Section 15. 205(a)

18. In the Notice, we proposed to amend Section 15.205(a) to state that the fundamental frequency, modulation components and out-of-band emissions from the transmitter as well as the emissions associated with the receiver shall not fall within any of the restricted frequency bands. This language resulted in some confusion among the commenters as to the Commission's intent. The purpose of the proposed change to Section 15.205(a) was to permit only spurious emissions within those bands at the field strength limit previously discussed. The fundamental and out-of-band emissions would be prohibited.

19. A transmitter produces two types of emissions: 1) those emissions contained within the necessary bandwidth (including the fundamental and most of the modulation components); and, 2) unwanted emissions. Unwanted emissions consist of out-of-band emissions and spurious emissions.[14] Out-of-band emissions are defined as those emissions resulting from the modulation process and falling immediately outside the necessary bandwidth. Spurious emissions are defined as those emissions outside of the necessary bandwidth, the level of which may be reduced without affecting the corresponding transmission of information.[15]

20. We proposed in this Notice to allow only the spurious emissions from Part 15 devices to fall within the restricted frequency bands in order to provide maximum interference protection to the radio services authorized in the restricted frequency bands. We are concerned about permitting out-of-band emissions in the restricted bands since out-of-band emissions are immediately adjacent to the necessary bandwidth. Because there are no frequency stability requirements for control and security alarm devices, there is a high probability that any transmitter designed to operate immediately adjacent to a restricted band could drift into the restricted band, significantly increasing the potential for interference.

21. DORCMA points out that on-off switching of the signal for coding purposes produces low level emissions immediately outside of the necessary bandwidth and that such emissions can not be eliminated without changing the coding methodology and process. DORCMA believed these emissions to be out-of-band emissions and, therefore, prohibited under the proposed regulations. However, the broadband emissions resulting from high speed on/off switching of the oscillator are not out-of-band emissions. Instead, they are spurious emissions since their level can be reduced without affecting the transmission of information. These switching transients are broadband and can fall within the restricted bands even when the control and security alarm transmitter is not located immediately adjacent to such bands. We will modify the language placed in the regulations in order to clarify this standard.

Measurement of Average Field Strength

22. All of the comments received supported the Commission's proposal concerning the alternative method of measurement used to determine the average field strength. As stated by Linear, the proposed method for averaging emission limits fairly reflects the operation of the device and the level of emissions which might cause interference and, at the same time, restricts the ability for manufacturers to employ creative pulse frames that could substantially raise the interference potential. Therefore, this change to the regulations is being adopted, as proposed, and is reflected in Sections 15.122 and 15.205(b) of the rules.

Dates for Implementing Changes to the Regulations, Deletion of the Stay and Waiver Provisions

23. Most of the comments supported the Commission's proposed time frame to delete the existing stay and waiver provisions. However, Genie questioned whether the proposed manufacture cut-off date applied to individual replacement components or to complete systems. Genie requested that firms be allowed to continue the manufacture of individual replacement components for a period of 10 years after adoption of a final rule in order to ensure that consumers will be able to buy replacement parts for current systems.

24. The dates proposed in the Notice applied to devices subject to our marketing regulations, *i.e.*, the transmitters and receivers used with control and security alarm devices. Those dates do not apply to individual components, such as transistors, resistors, etc., used to repair these devices. Furthermore, none of the regulations adopted herein would require Genie to change its frequency of operation or to use a different method of modulating the signal. The only change to the regulations involves the permitted level of spurious emissions. Thus, there is no reason to expect that equipment produced under the standards promulgated in this rule making would not be compatible with existing equipment. Genie's ability to provide replacement transmitters or receivers would not be impaired, although these devices would have to be in compliance with the new rules. Therefore, the Commission finds no basis for adopting Genie's request to permit the continued manufacture of devices not complying with the provisions of this Order.

Other Matters Addressed in the Comments

25. Some of the comments filed in this proceeding requested changes to the regulations other than those originally proposed. Pittway requested that the emission limits within the restricted frequency bands below 1000 MHz be relaxed. Genie requested that a limit of 20 dB be established for the peak-to-average ratio of the transmitted signal. Genie also requested that the test procedures be clarified, specifically those procedures concerning coherence of a receiver under test, the use of 1/4 wavelength antennas, and switch settings for digital coded transmitters. The Pacific Companies requested that the microwave frequency bands allocated for common carrier operation be listed as restricted bands.

26. Most of these matters were addressed in the original petitions for rule making and in the comments to those petitions, but the Commission declined to address them in this Notice.[16] No new information beyond that previously considered was presented in the comments in this proceeding. Therefore, the decision reached earlier remains in effect. In addition, since the Notice did not address the inclusion of additional restricted frequency bands, it would be inappropriate to address the request from the Pacific Companies in this proceeding. It should be noted, however, that the implementation of a 20 dB peak-to-average ratio, a change to the emission limits in the restricted frequency bands below 1000 MHz, and changes to the restricted bands are being addressed in GEN Docket No. 87-389. The comments from the Pacific Companies will be placed in that docket.

PROCEDURAL MATTERS

27. Pursuant to the Regulatory Flexibility Act of 1980, 5 USC 601 *et seq.*, the following final flexibility analysis has been prepared:

I. Need for and purpose of the rules.

The Commission's current regulations designed to protect various safety and sensitive authorized services from emissions from non-licensed control and security alarm devices were found to cause economic and technical design problems for a number of manufacturers, resulting in the Commission staying or waiving the emission limits above 1000 MHz for these devices pending rule making action. In this rule making, the Commission proposed to relax the existing limit and proposed a time frame within which control and security alarm devices must comply with the adopted regulations in order to continue to provide interference protection to the authorized radio services above 1000 MHz.

II. Summary of issues raised by public comments in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result.

No commenting parties raised issues specifically in response to the initial regulatory flexibility analysis. Since these regulations amount to a relaxation of the regulations, the only impact that the adoption of these rules should have are to those manufacturers that have not begun to develop products that comply with the current regulations. As stated in the comments, the proposed regulations are technically and economically achievable.

III. Significant alternatives considered.

The Commission has considered all of the alternatives presented in this proceeding and has adopted standards that can be economically achieved by industry while still protecting authorized users of the radio spectrum from an increased potential for receiving interference. Alternatives include deleting all emission standards, retaining the present limits, adopting the limit proposed in the Notice, or adopting the limit requested by Genie (see paragraphs 7 and 17).

28. The amendments contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

29. Accordingly, IT IS ORDERED that under the authority contained in Sections 4(i), 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, Part 15 of the Commission's Rules and Regulations IS AMENDED as set forth in Appendix B below. These rules and regulations are effective upon publication in the Federal Register.[17]

30. IT IS FURTHER ORDERED that the Order Granting Partial Stay, adopted January 12, 1984, and the Order Granting Waiver in Part, adopted January 16, 1984, for control and security alarm devices are rescinded in the following manner: effective (24 months from date of Fed. Reg. publication), all requests for equipment authorization for control and security alarm devices submitted to the Commission and, effective (30 months from date of Fed. Reg. publication), all control and security alarm devices manufactured or imported for marketing within the U. S. and its possessions must comply with the standards contained in Sections 15.201-15.215 of the regulations.

31. IT IS FURTHER ORDERED that this proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

APPENDIX A

List of parties filing comments:
Alarm Device Manufacturing Company, a division of Pittway Corporation
Chamberlain Manufacturing Corporation
Door Operator and Remote Controls Manufacturers Association
Genie Home Products, a division of Philips Home Products, Inc.
Interactive Technologies Inc.
Linear Corporation
National Radio Astronomy Observatory
Pacific Bell and Nevada Bell
Rollins Inc.
RF Monolithics, Inc.
Security Equipment Industry Association

List of parties filing reply comments:
Chamberlain Manufacturing Corporation
Door Operator and Remote Controls Manufacturers Association
Genie Home Products, a division of Philips Home Products, Inc.

National Academy of Sciences' Committee on Radio Frequencies (National Academy of Sciences and National Radio Astronomy Observatory

APPENDIX B

Title 47 of the Code of Federal Regulations, Part 15, is amended as follows:

PART 15 - RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 is revised to read as follows:

AUTHORITY: Secs. 4, 302, 303, and 307 of the Communications Act of 1934, as amended; 47 USC 154, 302, 303, 307.

2. Section 15.122 is amended by revising the Note under paragraph (a) to read as follows:

Section 15.122 ***Periodic operation in the bands 40.66 - 40.70 MHz and above 70 MHz.***

* * * * *

(a) * * *

NOTE: For pulsed operation, the measured field strength shall be determined by averaging over one complete pulse train, including blanking intervals, as long as the pulse train does not exceed 0.1 seconds. As an alternative or in those cases where the pulse train exceeds 0.1 seconds, the measured field strength shall be determined from the averaged absolute voltage during a 0.1 second interval when the field strength is at its maximum value. The exact method of calculating the average field strength shall be submitted with any application for equipment authorization.

* * * * *

3. Section 15.184 is amended by revising the introductory text to read as follows:

Section 15.184 ***Interim requirements for operation above 70 MHz.***

Manufacture and importation of a radio control for a door opener complying with all of the provisions of this section shall cease (30 months from date of Fed. Reg. publication). Applications for certification of devices operating under this section will not be accepted by the Commission after (24 months from date of Fed. Reg. publication).

* * * * *

4. The authority citation for Sections 15.201-15.215 is removed.

5. Section 15.205 is amended by removing the Note under paragraph (a), revising the introductory text of paragraph (a), adding new subparagraphs (a)(1) and (a)(2), revising the Note under paragraph (b), and adding a new paragraph (f), to read as follows:

Section 15.205 ***Technical standards.***

(a) Only spurious emissions shall be permitted within any of the frequency bands listed below. Spurious emissions from the transmitter, as well as radiated emissions from receivers associated with transmitters operating under these provisions, that fall within these frequency bands shall not exceed the designated emission limits.

* * * * *

(1) Emissions in these bands shall not exceed 15 uV/m at 3 meters on frequencies equal to or below 1000 MHz.

(2) Emissions in these bands on frequencies above 1000 MHz shall not exceed 500 uV/m at 3 meters or, based on the fundamental frequency of the transmitter, the spurious emission limits in paragraph (b) of this Section, whichever is the lower value. A power density level may be measured to show the equivalent uV/m limit.

(b) * * *

NOTE: For pulsed operation, the measured field strength shall be determined by averaging over one complete pulse train, including blanking intervals, as long as the pulse train does not exceed 0.1 seconds. As an alternative or in those cases where the pulse train exceeds 0.1 seconds, the measured field strength shall be determined from the averaged absolute voltage during a 0.1 second interval when the field strength is at its maximum value. The exact method of calculating the average field strength shall be submitted with any application for equipment authorization.

* * * * *

(f) For those devices produced under the provisions of the Commission's Order Granting Partial Stay, adopted January 12, 1984, FCC 84-12, or Order Granting Waiver in Part, adopted January 16, 1984, FCC 84-18, all requests for a grant of equipment authorization received as of (24 months from Fed. Reg. publication) and all equipment manufactured or imported after (30 months from Fed. Reg. publication) must comply with the provisions of Sections 15.201-15.215.

FOOTNOTES

[1] These restricted frequency bands are used for radionavigation, radio astronomy, safety services and U. S. Government operations which are particularly susceptible to extraneous radio frequency signals. In accordance with Section 15.205(a) of the regulations, no emissions are permitted within these specified bands. Until now, this provision was considered to be met as long as emissions within the restricted bands below 1000 MHz did not exceed 15 uV/m at 3 meters, and emissions within the restricted bands above 1000 MHz did not exceed 125 uV/m at 3 meters.

[2] *See* Report and Order in Docket No. 20990, adopted October 22, 1981, 50 RR 2d 667 (1981), and Memorandum Opinion and Order in Docket No. 20990, adopted October 28, 1982, 52 RR 2d 775 (1982). This proceeding established the current Part 15 regulations for control and security alarm devices.

[3] Order Granting Partial Stay, FCC 84-12, adopted January 12, 1984. This Order allowed garage door opener controls to demonstrate compliance with the regulations and test procedures in effect prior to the adoption of Docket No. 20990. The provisions of this Order did not apply to control devices other than garage door opener controls.

[4] Order Granting Waiver in Part, FCC 84-18, adopted January 16, 1984. This Order allowed the manufacturers of security alarm devices which were under development at the time of this Order to obtain a waiver of the requirement to report emission measurements above 1000 MHz. Unless otherwise specifically granted, this Order did not apply to security alarm devices on which development began after January 16, 1984.

[5] *See* Notice of Proposed Rule Making in Docket No. 86-422, adopted October 22, 1986, 1 FCC Rcd 1111 (1986).

[6] The R&O in Docket No. 20990 defined "no emissions" in the restricted bands *below* 1000 MHz as 15 uV/m at 3 meters. The MO&O in Docket No. 20990 relaxed the limit in the restricted bands *above* 1000 MHz from "no emissions detected" to a level of 125 uV/m at 3 meters.

[7] In the interest of obtaining all relevant information in this proceeding, all late filed comments and reply comments were accepted.

[8] *See* "Technical Subcommittee (TSC) Review of The Federal Communications Commission's Draft Notice of Proposed Rule Making in the matter of Revision of Parts 2 and 15 of the Rules Regarding the Operation of Non-Licensed Radio Frequency Devices", Interdepartment Radio Advisory Committee/National Telecommunications and Information Administration, November 5, 1986, filed with the Office of Engineering and Technology by cover letter dated December 5, 1986.

[9] *See* Notice of Proposed Rule Making in GEN Docket No. 87-389, adopted September 17, 1987, 2 FCC Rcd 6135 (1987).

[10] The frequency bands below 5 GHz that were referenced by NRAO are 1400-1427 MHz, 1660-1668.5 MHz, 2690-2700 MHz and 4990-5000 MHz.

[11] *See* Report 224-5, "Interference Protection Criteria for the Radioastronomy Service", International Telecommunication Union, International Radio Consultative Committee, Recommendations and Reports of the CCIR, 1982, Volume II, XVth Plenary Assembly.

[12] IRAC/NTIA, *supra*, p. 7.

[13] *Ibid.*, p. 14.

[14] *See* 47 CFR 2.1.

[15] *Ibid.*

[16] *See* Notice of Proposed Rule Making in 86-422, *supra*, paragraph 3.

[17] In accordance with 5 U. S. C. 553(d), publication of the amended regulations in the Federal Register at least 30 days before the effective date is not required since the changes to the regulations relieve existing restrictions. Furthermore, the partial stay and waiver provisions are not rescinded for a period of 24 months from the date of publication in the Federal Register.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-103

In re applications of

LARRY S. MAGNUSON (hereafter Magnuson) — File No. BPH-861112MM

FORNIA COMMUNICATIONS (hereafter Fornia) — File No. BPH-861113MH

RUDY LEROY SPIRK (hereafter Spirk) — File No. BPH-861112ML (PREVIOUSLY DISMISSED)

For a Construction Permit
For a New FM Station
in South Sioux City, Nebraska
at Channel 296A

HEARING DESIGNATION ORDER

Adopted: February 29, 1988; Released: March 24, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matters*. On November 12, 1986, Spirk filed an application for a new FM station in South Sioux City, Nebraska. On October 5, 1987 Spirk's application was returned for violation of the spacing requirements found in 47 C.F.R. § 73.207 and in the *Memorandum Opinion and Order* in BC Docket 80-90, 97 FCC 2d 279, 283 (1984). Spirk proposed a site short-spaced to the buffer-zone protection accorded to KEXL-FM, Norfolk, Nebraska, operating at second adjacent Channel 294C. Spirk failed to file a timely waiver request of the requirement with his application. Spirk did, however, on November 4, 1987, file a timely Petition for Reconsideration and Reinstatement Nunc Pro Tunc of the dismissal of his application. That petition will herein be denied.[1]

3. In *Memorandum Opinion and Order, supra*, the Commission provided (until March 1, 1987) existing Class C stations operating with an antenna height above average terrain (HAAT) of less than 300 meters an additional 16 kilometers of spacing protection. As it reminded applicants in its *Public Notice* released April 19, 1985, "all commercial applications for FM allotments adopted on or after March 1, 1984 must meet the minimum distance separations specified in § 73.207 PLUS an additional 16 kilometers to existing Class C stations with the buffer-zone." Since the allotment to Channel 296A was adopted on August 21, 1986, applicants for this frequency were responsible for proposing antenna sites at a minimum of 233 kilometers from the licensed facilities (100 kilowatts effective radiated power (ERP)/158 meters HAAT) of KEXL's licensed Class C1 site.

4. Pursuant to 47 C.F.R. § 73.3566(a), applications determined to be patently not in accordance with the Commission's Rules, unless accompanied by an appropriate waiver request, will not be accepted for filing or, will be dismissed if inadvertently accepted for filing. As specified in paragraph 32 of the *Report and Order* in MM Docket 84-750, 50 Fed. Reg. 19936 (1985), applications so returned may not be resubmitted with a curative amendment to regain *nunc pro tunc* status since applications were afforded 30 days after the release of the notice of tenderability to amend their applications into acceptable form. Petitions for reconsideration of such returns must, pursuant to 47 C.F.R. § 1.106(d)(2), cite "findings of fact and/or conclusions of law" believed to be erroneous in the determination of unacceptability. Under these rules, an application with a short-spaced site clearly cannot be reinstated and found acceptable when there has been no request for a waiver nor any Commission error.

5. At issue, therefore, is whether Spirk complies with the above-noted requirements governing short-spacing and the protection of buffer-zones. Spirk concedes in his Petition for Reconsideration that he had proposed an antenna site which was short-spaced to the buffer zone when the application was filed. Spirk attempts to circumvent this deficiency through arguments advanced in his Petition.

6. Spirk, in his Petition, argues that the buffer-zone protection no longer applies since KEXL has applied for and been granted a construction permit for a modification of facilities to increase to full Class C status. Spirk further contends that the processing standards are relatively new, so the Commission needs to give more guidance to applicants. Finally, Spirk admits that he knew of the possible spacing problem but did nothing about it because of the construction permit granted to KEXL and because Commission staff had told him that the buffer-zone did not apply in this situation.

7. On May 7, 1984, KEXL filed an application for an upgrade of facilities which was subsequently granted and a construction permit issued on June 25, 1984. This modification will upgrade KEXL to a full Class C station after commencement of Program Test Authority and a license is issued to KEXL to operate at its new antenna height. Spirk's argument that the buffer-zone is inapplicable since KEXL has received a construction permit to increase its tower height is intrinsically flawed. The fact that KEXL has been issued a construction permit has no effect on its buffer-zone protection. The *Memorandum Opinion and Order* in Docket 80-90, *supra*, states the additional 16 kilometer protection is given to "existing Class C stations *currently operating* with an HAAT of less than 300 meters." (Emphasis added) On November 12, 1986 when Spirk filed his application, KEXL was a licensed Class C1 station operating with an HAAT of 158 meters. Therefore, KEXL was accorded the protection of the additional 16 kilometers until March 1, 1987 or until licensed to operate at a new height above 300 meters. To rule otherwise would be depriving a Class C station operating at less than full power its entire allotted period for unrestrained upgrading. The fact that KEXL has been issued a construction permit does not lock KEXL into its initial decision of increasing its tower height. The language of the *Memorandum Opinion and Order* requires that KEXL be given the full allotted time should it decide before March 1, 1987 to move or make additional modifications to its existing facilities.

8. Spirk argues next that the processing rules were still relatively new and that there was no precedent for which to guide applicants. This argument is without merit. The *Memorandum Opinion and Order* enacting the buffer-zone was adopted and went into effect on March 1, 1984, more than two and one-half years before the filing of Spirk's application. The lack of precedent to follow does not suffice as justification for a violation of the Commission's Rules. It would be unreasonable to withhold enforcement of rules which were published in the *Federal Register* until there has been actual precedent set of such enforcement. Publication of the buffer-zone requirements in the *Federal Register* serves as adequate notice. *See* 5 U.S.C. § 552 (1981); *Diamond Ring Ranch, Inc. v. Morton*, 531 F.2d 1397 (10th Cir. 1976); *Winston Brothers Co. v. U. S.*, 458 F.2d 49 (Ct. Cl. 1972). By receiving legal notice of the Commission's Rules, all applicants are expected to comply with such rules regardless of their novelty.

9. Finally, Spirk alleges that he knew of a potential buffer-zone problem but did nothing about it because of the construction permit issued to KEXL and reliance on Commission staff that the buffer-zone did not apply in this circumstance. If Spirk was aware of possible spacing problems, a waiver request should have been filed. Spirk's discussion of the equities involved could have been better considered in a waiver request, but have no place in a petition for reconsideration which is only to "cite the findings of fact and/or conclusions of law which petitioner believes to be erroneous, and shall state with particularity the respects in which he believes such findings and conclusions should be changed." 47 C.F.R. § 1.106(d)(2). Spirk cites to no Commission error. Also, the argument that Spirk relied on Commission staff that the buffer-zone is inapplicable in this situation is to no effect. The Petition cites to no specifics, so the Commission has no means by which to verify Spirk's allegations. Furthermore, even if the Commission could verify that Spirk was misinformed, the Commission has consistently held that the obligation is upon the parties involved to "ascertain facts from official Commission records and files and not rely on inquiries to the staff." *See 220 Television, Inc.*, 81 FCC 2d 575, 577 (1980); *Camelot, Inc.*, 61 FCC 2d 15, 38 RR 2d 620 (1976). To accept Spirk's argument would enable an applicant to unjustifiably shift a responsibility that is properly its own-- *i.e.*, to be aware of and comply with the rules published in the *Federal Register* --to the Commission. *M & C Broadcasting, Inc.*, FCC Docket 85-217, (Released April 29, 1985).

10. In light of the above, Spirk's application which proposes a transmitter site short-spaced to the buffer-zone protection accorded to station KEXL is dismissed and the Petition for Reconsideration and Reinstatement Nunc Pro Tunc is denied.

11. *Other Matters*. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

12. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

13. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

14. IT IS FURTHER ORDERED, That the Petition for Reconsideration and Renstatement Nunc Pro Tunc filed by Spirk on November 4, 1987 IS HEREBY DENIED.

15. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

16. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **April 14, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

17. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] In order to better utilize the Bureau's limited processing staff resources, the Commission has approved staff consideration and disposition of tenderability and acceptability matters in the context of the relevant hearing designation order rather than in a separate action document. *Teton* Broadcasting, 1 FCC Rcd 518, 521 n.5 (1986).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-135

In the Matter of

Height and Power Increases in the Public Land Mobile Radio Service — RM 5555

NOTICE OF PROPOSED RULE MAKING

Adopted March 18, 1988; Released March 23, 1988

By the Commission:

INTRODUCTION

1. The Radio Common Carrier Division of Telocator Network of America (Telocator or Petitioner) filed a Petition for Rule Making requesting this Commission to initiate a proceeding to allow base stations in the Public Land Mobile Radio Service (PLMRS) to operate with increased height above average terrain (HAAT) and higher effective radiated power (ERP). Accordingly, Telocator requests amendments to Sections 22.117 and 22.505[1] of the Commission's Rules.

TELOCATOR'S PROPOSAL FOR INCREASED HEIGHT AND POWER

2. The Petitioner requests the amendment of Section 22.505 of the Commission's Rules to permit PLMRS stations to operate without height or power limitations when the *interference* contour[2] of a proposed station falls entirely within the composite interference contour(s) of co-channel station(s) operating under the control of the same licensee. Applications for this authority would be filed on FCC Form 401 and would be subject to prior approval and public notice. Currently, under Section 22.505, most PLMRS stations are restricted to 500 Watts at an average HAAT of 500 feet.

3. Telocator also requests that Section 22.117 be amended to permit PLMRS stations to operate without height or power restrictions when the proposed *service and interference* contours fall entirely within the composite service and interference contours of the existing co-channel stations, which are operated under the control of the same licensee. The licensee would notify this Commission of these transmitter(s) through the filing of a Form 489, and such notifications would not be subject to prior approval or public notice.

COMMENTS ON TELOCATOR'S PROPOSAL

4. Commenters on the Petitioner's request generally agree that the proposal would be of benefit to the industry and the public it serves. Some comments propose changes that would expand Telocator's proposal, and a few comments request that certain prohibitions and safeguards be adopted by the Commission.

5. Specifically, Telecomm Systems, Inc. (Telecomm) supports the Telocator proposal and, in addition, would amend Section 22.117 to allow coverage of service gaps in an existing system. [3] NewVector Communications, Inc. (NewVector) requests that Telocator's proposal include the cellular mobile radio service, and Paging Network, Inc. (PNI) would broaden the Petition to include paging stations in the 931 MHz band. Courtesy Communications, Inc. agrees with the proposed rule changes, and has submitted sample applications for height-power waivers that were previously denied by this Commission. Pacific Bell and Nevada Bell support Telocator's Petition.

6. The consolidated comments of Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (MTN, NWB and PNB) request that frequencies in the 35 and 43 MHz bands be excluded from the proposal because of the potential for skip interference.[4] PNI cautions the Commission not to allow interference to existing carriers and requests that we place on public notice all requests made under the amended rules. Also, PNI claims that interference contours are not continuous and, therefore, asks the Commission for clarification.[5]

REPLY COMMENTS

7. Telocator comments that implementation of the proposed rules for the 35 and 43 MHz band should be delayed until June 1988 in order to protect the existing two-way systems from skip interference.[6] The Petitioner asserts that there will not be a skip interference problem to paging in these bands because of both the relatively lower skip signal and the signal strength required for paging. Moreover, Telocator agrees with PNI's request that all modifications made under these amended rules be placed on public notice for 30 days.

8. PacTel Mobile Companies (PacTel) comments that a potential exists for severe interference to television reception from stations with ERPs greater than currently authorized, which are operating in the 43 MHz band. According to PacTel, increased height and power will exacerbate the existing skip interference problem in the 35 and 43 MHz bands. However, PacTel agrees with Telocator that the height-power rules for 150 MHz and above should be changed.

9. McCaw Communications Companies, Inc. (McCaw) is in agreement with Telocator's Petition but, like NewVector, would expand the proposal to allow increased height and power in the cellular radio service. McCaw disagrees with PNI's assertion that the interference contours under the Carey Report are discontinuous. In addition, McCaw takes exception to the comments of MTN, NWB and PNB regarding low band skip interference. Also, McCaw would defer implementation of the rule changes for low band frequencies until June 1988 when two-way low band service is to be eliminated. Finally, McCaw asserts that one-way paging services on the low band frequencies are not

entitled to protection from tropospheric and ionospheric interference because Section 22.100(c) does not allow for such protection, except for two-way services.

DISCUSSION

10. We grant the Petition and initiate a Rule Making to consider the elimination of, or an increase in, the existing standards. We are aware that many licensees operate large regional systems and, because of the current limitations, must use several transmitters. If the height and power limitations were relaxed, those licensees would be able to serve the same geographic areas with fewer transmitters and, thus, at a reduced cost. However, relaxation of the height and power restrictions creates the potential for an increase in interference and a deterioration in service. Therefore, we will solicit comments on the advantages and disadvantages of Telocator's proposal as it would affect the various frequency bands utilized by PLMRS licensees.

INCREASE IN POWER AND INTERFERENCE TO LOW BAND PRIVATE RADIO STATIONS

11. The commenters did not address the issue of the interference to low band private radio stations that may result from an increase in power. However, we are concerned about interference occurring when the sidebands of paging transmissions degrade the performance of base station receivers in adjacent channels.[7] Our current rules do not incorporate specific technical requirements for protection of these adjacent channels. Rather, an informal six-mile separation between base stations was adopted. Harmful interference and the burden of eliminating it are assumed by a PLMRS station that is within six miles of a private radio base station on an existing adjacent channel, unless the parties are able to resolve the problem.[8]

12. We have studied the interference to adjacent-channel private radio mobile units in the near vicinity of paging base stations of the PLMRS.[9] For PLMRS stations with antenna heights of 500 feet and ERPs of 500, 1000 and 2000 Watts, our study shows that the areas calculated to receive interference are 19.6, 28.3 and 38.5 square miles respectively.

13. Because of the increased interference potential to existing and potential stations in the Special Industrial Radio Service and Business Radio Service, we believe that the adjacent-channel stations to these services should not be allowed to increase height or power beyond that currently authorized. We are concerned that increases in either height or power would increase the separation distances necessary between private radio and PLMRS stations on adjacent channels. Although we do not believe that increasing the power for these adjacent channels is prudent, we solicit comments on the maximum power that can be tolerated, the interference standards to be adopted, and the benefits or problems to be expected if the ERP is increased.

Skip Interference and Stations in the 35 MHz Band

14. MTN, NWB and PNB comment that frequencies in the 35 MHz band should not be permitted to increase height or power because of the potential for skip interference. In its reply, Telocator argues that protection of paging systems from skip interference is unnecessary because the field strengths in multi-transmitter urban paging systems are much higher than 43 dBu.[10] But not all paging systems use multiple transmitters, which have a higher cumulative field strength. Some systems use only one or two transmitters, which have a lower cumulative field strength and, consequently, will be susceptible to increased interference. Therefore, those systems without multiple transmitters should be protected so that subscribers will not experience a degradation in service.

15. McCaw states that the Commission rules do not provide for protection of low band paging from skip interference. Our current rules do not provide for protection because the maximum permissible ERP does not create significant interference problems. However, we believe that allowing PLMRS stations to operate with unlimited power would result in additional interference to low band paging systems. Such a result would not be in the public interest since service to customers would be impaired.

16. We have made a study of skip interference to paging systems consisting of a single transmitter in the 35 MHz band. For this study, we found the protected field strength in the Carey Report to be 26 dBu. Using the methods adopted in CC Docket 80-189, we found the interfering signal to be 24 dBu at 1800 km for the 35 MHz band. From this determination, we conclude that the maximum power in the 35 MHz band should not exceed 793 Watts (-1.01 dBk). We invite comments on our skip interference analysis, our rationale for imposing these limitations, and the proposed limits.

43 MHz Band and Interference to Broadcast Television

17. Most television receivers marketed in the United States today have intermediate frequency (IF) amplifiers operating on the frequencies 41.25 MHz (aural) and 45.75 MHz (video). If a paging system in the 43 MHz band is located within one mile or less of a television receiver, interference is likely to occur. The probable reason for the interference is the direct signal pickup by the IF components of the television receiver. When this occurs, all television channels are affected.[11]

18. Currently, all 43 MHz paging system licenses are approved on a two-year developmental basis because of the potential for interference to broadcast television. This Commission receives many complaints of interference each year as a result of public surveys, which are conducted within two miles of the paging base station pursuant to the conditions of the developmental authority. We have studied the field strengths within two miles of the paging station and found that the propagation mode is primarily free space. Therefore, the existing allowable power, and not the height, is the main cause of interference. Given this finding, an increase in power may result in additional interference to broadcast reception. Because of the severe nature of the interference caused and the large number of complaints already received, we do not believe it is in the public interest to allow an increase in power for stations in the 43 MHz band.

INCREASE IN POWER AND INTERFERENCE TO 158 MHz BAND BASE RECEIVERS FROM 158 MHz BAND PAGING TRANSMITTERS

19. Neither Telocator nor the commenters discussed the possibility that an increase in power for 158 MHz band paging transmitters may cause interference to two-way 158 MHz band base receivers. The 158 MHz frequencies are as follows:

Transmitter / Receiver
158.10 MHz / 158.07 MHz
158.70 MHz / 158.67 MHz

We are concerned about interference from the sidebands of paging transmissions degrading the performance of base station receivers in adjacent channels. Our current rules do not incorporate requirements for protection of these adjacent channels. The interference to base receivers is similar to that described in the section on adjacent-channel low band systems.

20. Given the differences in channel separations and frequencies in the low band and the 158 MHz band, we have conducted a study using the methods of CC Docket 80-189. For a paging base station operating at 500 Watts and 500 feet above average terrain, we found that the separation distance to the protected base receiver should be about 0.9 of a mile.[12] For ERPs of 1000 and 2000 Watts, we found the separation distances to be 1.3 and 1.9 miles respectively. These distances are much smaller than those found in the low band studies. We invite comments on the maximum permissible ERP for the 158 MHz band paging transmitters.

PLMRS Stations and Adjacent - Channel Private Radio Systems

21. We are also concerned about the potential interference to adjacent-channel private radio systems from PLMRS stations operating at higher powers. Table 5 of this *Notice* gives the frequency relationship and use for private radio systems operating adjacent to PLMRS stations. For the 152.27, 152.87, and 454.00 MHz frequencies, the primary interference is to the receiver at the base station. The interference analysis for the 152 MHz frequencies is the same as that for the 158 MHz paging transmit/base receive problem discussed in the preceding section. Our study for the 454.00 MHz stations yields results similar to those for the 152 MHz band.[13]

22. In regard to the 454.00 MHz frequency, for a transmitting HAAT of 500 feet and an ERP of 500 Watts, the calculated separation distance is 1 mile. For an HAAT of 500 feet, the distance is 1.3 miles for 1000 Watts and 1.9 miles for 2000 Watts. As to stations operating at higher powers on frequencies in the 150 MHz band, there will be interference to paging receivers operating on frequencies 152.0075 MHz and 152.48 MHz. The calculated interference distances are 0.9 miles at 500 Watts, 1.3 miles at 1000 Watts and 1.9 miles at 2000 Watts. These are the same distances that we found for the 152.27 and 152.87 MHz systems. Accordingly, comments are solicited on the maximum power that should be allowed for the PLMRS frequencies listed in Table 5.

The Remaining 150 and 450 MHz Frequencies

23. Neither the Petitioner nor the commenters addressed potential interference to the 150 and 450 MHz frequencies. For these PLMRS frequencies, an increase in the ERP results in an increase in existing interference distances when adjacent-channel mobile or paging units are near base station transmitters. The interference distances are similar to those determined in the 150 and 450 MHz studies previously discussed in this *Notice*. Moreover, an increase in height and/or power will have an effect on the 450 MHz frequencies used for control and repeater stations. We invite the public to comment on the height and power limitations for the 150 and 450 MHz frequencies discussed in this section.

Height

24. Petitioner requests that Section 22.505 be amended to permit PLMRS stations to operate without height limitations as long as the proposed station's interference contour does not exceed the existing co-channel interference contours. From our experience, the Carey Report's predictions of service and interference contours do not always hold true for increased heights.[14] We invite comments on the height proposal, and request suggestions on implementing these changes while minimizing the potential for interference.

900 MHz Band

25. For PLMRS paging stations in the 900 MHz band, we do not have any rules governing the methods of calculating service and interference contours. Regardless of the height and power being used, Section 22.504(b)(2) specifies a 20-mile service contour, and Section 22.503(d) specifies a separation distance of 70 miles between co-channel stations. These distances are based on the maximum power and height of 1000 Watts at 1000 feet. We seek suggestions for a method of calculating service and interference contours, and comments on whether changes in the height/power rules would be appropriate for this band.

26. In addition, 900 MHz band paging base station transmitters will cause interference to adjacent-channel pagers in close proximity to these base stations. We therefore solicit comments on the maximum HAAT and ERP that should be authorized for base station transmitters in light of this potential interference.

Nationwide Paging

27. The issue of permitting the two authorized nationwide paging channels to operate without height restrictions was not addressed by the commenters. However, given that the network organizer[15] governs the assignment of the nationwide paging frequencies, we believe it would be appropriate to allow unlimited height for nationwide paging. We invite comments on this issue.

Cellular

28. In a separate proceeding, we are considering the question raised in NewVector's and McCaw's comments regarding whether to allow increased height and power in the cellular mobile radio service.[16] In light of this fact, we will not address the issue of height and power in the cellular radio service here.

MAJOR ENVIRONMENTAL ACTION

29. Section 1.1307(b) of the rules requires applicants to determine if a proposed facility or operation will cause exposure of workers or the general public to levels of radio frequency radiation in excess of the adopted guidelines.[17] Applications for facilities and services authorized under Part 22 are exempt from the provisions of Section 1.1307(b) because of their low operating power. However, if PLMRS stations are allowed to operate with unlimited power, as the Petitioner proposes, Part 22 facilities potentially could exceed the radiation exposure guidelines.

Therefore, we invite comments on whether Part 22 applicants should be required to comply with Section 1.1307(b) and, if so, at what levels of power a determination of radiation exposure should be required.

BLANKETING INTERFERENCE

30. We are concerned that PLMRS stations operating with greatly increased effective radiated power may cause blanketing interference.[18] Implementation of a rule similar to the FM broadcast blanketing rule set forth in Section 73.318 may be useful in controlling such interference. This FM rule provides that new stations must satisfy all complaints of blanketing interference to broadcast receivers that are received during a one-year period. Under Section 73.318, existing licensees must provide technical information or assistance to complainants on remedies for blanketing interference. We request comments on the necessity for applying such a rule to PLMRS stations, and at what power levels this rule should be implemented.

Regulatory Flexibility Act - Initial Analysis

31. *Reasons for action and objectives*. The proposed action will enhance the efficiency of PLMRS operations because fewer transmitters would be needed to cover the same geographic area. In addition, building penetration will be increased, and the PLMRS systems' ability to overcome man-made noise will be improved.

32. *Legal Basis*. The authority for this proposed Rule Making is contained in Sections 1, 4(i), 301 and 303 of the Communications Act of 1934, as amended.

33. *Small entities affected and initial impact*. The proposed rules are intended to have a beneficial impact on PLMRS licensees. Given that fewer transmitters will be required, the licensees will be able to have the same coverage area at a lower cost.

34. *Reflect federal rules that overlap, duplicate or conflict with this action*. As discussed in this *Notice*, the proposed rules alter the Commission's existing rules with regard to the height and power limitations of PLMRS stations. Other than the specific rules changed, to our knowledge there is no federal rule that conflicts with, duplicates or overlaps the proposals made in this *Notice*.

35. *Reporting, record - keeping and compliance requirements*. None.

36. *Specific alternatives that could accomplish the same objectives*. We have determined no specific alternatives that would allow for an increase of height and power by PLMRS licensees.

37. Comments on all aspects of the analysis and proposed rules of this *Notice* are encouraged. Interested persons are invited to submit comments in accordance with Section 1.419 of the Commission's Rules. 47 C.F.R. Section 1.419. Comments must be filed by **May 16, 1988,** and reply comments by **May 31, 1988.**

Ex Parte Presentations

38. For purposes of this non-restricted notice and comment Rule Making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* Section 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202 (f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

39. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2) if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. Section 1.1206.

40. A copy of this *Notice of Proposed Rule Making* shall be sent to the Chief, Counsel of Advocacy of the Small Business Administration.

41. For further information concerning the proposals or studies referenced herein, please contact John O'Connor at (202) 653-5560.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

APPENDIX A

PARTIES RESPONDING TO PETITION

Comments

Courtesy Communications, Inc.

Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company

NewVector Communications, Inc.

Pacific Bell and Nevada Bell

Paging Network, Inc.

Telecomm Systems, Inc.

Reply Comments

McCaw Communications Companies, Inc.

PacTel Mobile Companies

Telocator Network of America, Radio Common Carrier Division

APPENDIX B

PROPOSED RULES

Part 22 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

Part 22 - Public Mobile Service

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. Section 22.117 is proposed to be amended by revising paragraph (b)(1) to read as follows:

Section 22. 117 Transmitters.

* * * * *

(b) * * *

(1) The Commission is notified of the new transmitter(s) through the filing of a Form 489 along with a completed Schedule B from Form 401. The Form 401 shall include a certification that the reliable service area contour and predicted interference contour of the proposed station are entirely encompassed within the reliable service area contour(s) and predicted interference contour(s) of the existing co-channel station(s), which are operated under the control of the same licensee. Requests that comply with this Section and are filed under the height-power limits of Section 22.505(c) and the power limits of Section 22.506(f) must be filed on Form 401 and will be placed on public notice. If petitions to deny are not filed against the application within 30 days of public notice, the licensee may operate the station without further Commission action. Cellular licensees certify that the 39 dBu contours of each cell remain within the CGSA.

3. Section 22.505 is proposed to be amended by adding paragraph (c) to read as follows:

Section 22. 505 Antenna height - power limit.

* * * * *

(c) Proposed base stations, other than in the air-ground radio service and in the 470-512 MHz band, whose interference contours do not exceed the interference contour(s) of existing co-channel station(s), which are operated under the control of the same licensee, do not have to comply with the height-power limits of this Section.

4. Section 22.506 is proposed to be amended by adding paragraph (f) to read as follows:

Section 22. 506 Power.

* * * * *

(f) Proposed base stations, other than in the air-ground radio service, the 43 MHz band, and the 470-512 MHz band, whose interference contours do not exceed the interference contour(s) of existing co-channel station(s), which are operated under the control of the same licensee, do not have to comply with the power restrictions of this Section.

TABLE 1

INTERLEAVED FREQUENCY ALLOCATION STRUCTURE IN THE 35 MHz BAND

PLMRS Frequency (MHz)	Private Radio Service Frequency (MHz)
35.20-35.26*	35.18 (Business Radio Service)
35.30	35.28 (SIRS)
35.34	35.32 (SIRS)
35.38	35.36 (SIRS)
35.42	35.40 (SIRS)
35.46	35.44 (SIRS)
35.50	35.48 (SIRS)
	35.52 (SIRS)
35.54-35.62**	35.64 (SERS)
35.66	35.68 (SERS)

Notes:

* Block of four 20 kHz PLMRS channels.

** Block of five 20 kHz PLMRS channels.

SIRS-Special Industrial Radio Service.

SERS-Special Emergency Radio Service. The SERS frequencies are allocated for paging, and adjacent-channel interference between paging operations is not believed to be a problem.

TABLE 2

MAXIMUM EFFECTIVE RADIATED POWER PERMITTED IN PROTECTING ADJACENT- CHANNEL PRIVATE RADIO SYSTEMS FROM INTERFERENCE BY STATIONS IN THE PLMRS

ASSUMPTIONS: PLANE EARTH PROPAGATION CONDITIONS USING BULLINGTON'S PREDICTION METHODS FIELD STRENGTH AT PROTECTED RECEIVER = 85 dB(uV/m) MAX RECEIVER AND TRANSMITTER ANTENNA HEIGHTS ARE 500 FEET

DISTANCE BETWEEN STATIONS IN MILES	MAXIMUM PERMISSIBLE ERP IN dBW	
	35 MHz	43 MHz
1.0	11.8	11.7
2.0	17.8	17.6
3.0	20.8	20.4
4.0	23.8	23.4
5.0	25.7	25.4
6.0	27.4	27.2

TABLE 3

MAXIMUM EFFECTIVE RADIATED POWER PERMITTED IN PROTECTING ADJACENT - CHANNEL PRIVATE RADIO SYSTEMS FROM INTERFERENCE BY STATIONS IN THE PLMRS 35 MHz BAND

ASSUMPTIONS: PLANE EARTH PROPAGATION CONDITIONS USING BULLINGTON'S PREDICTION METHODS FIELD STRENGTH AT PROTECTED RECEIVER = 85 dB(uV/m) MAX RECEIVING ANTENNA HEIGHT 100 FEET. TRANSMITTING ANNTENNA HEIGHTS AS GIVEN.

DISTANCE BETWEEN STATIONS IN MILES	MAXIMUM PERMISSIBLE ERP IN dBW FOR INDICATED ANTENNA HEIGHT OF PROPOSED STATION					
	100 FT	200 FT	500 FT	1000 FT	2000 FT	5000 FT
1.0	14.8	11.8	11.8	11.8 1	1.8	11.8
2.0	26.5	21.2	17.8	17.8	17.8	17.8
3.0	33.4	28.1	20.8	20.8	20.8	20.8
4.0	38.1	32.7	24.1	23.8	23.8	23.8
5.0	41.9	36.7	28.8	25.8	25.8	25.8
6.0	45.3	39.8	31.9	27.4	27.4	27.4

TABLE 4

MAXIMUM EFFECTIVE RADIATED POWER PERMITTED IN PROTECTING ADJACENT - CHANNEL PRIVATE RADIO SYSTEMS FROM INTERFERENCE BY STATIONS IN THE PLMRS 43 MHz BAND

ASSUMPTIONS: PLANE EARTH PROPAGATION CONDITIONS USING BULLINGTON'S PREDICTION METHODS FIELD STRENGTH AT PROTECTED RECEIVER = 85 dB(uV/m) MAX RECEIVING ANTENNA HEIGHT 100 FEET. TRANSMITTING ANTENNA HEIGHTS AS GIVEN.

DISTANCE BETWEEN STATIONS IN MILES	MAXIMUM PERMISSIBLE ERP IN dBW FOR INDICATED ANTENNA HEIGHT OF PROPOSED STATION					
	100 FT	200 FT	500 FT	1000 FT	2000 FT	5000 FT
1.0	13.0	11.2	11.2	11.2	11.2	11.2
2.0	24.7	19.4	17.6	17.6	17.6	17.6
3.0	31.6	26.3	21.3	21.3	21.3	21.3
4.0	36.3	30.9	23.4	23.4	23.4	23.4
5.0	40.1	34.9	27.0	25.4	25.4	25.4
6.0	43.5	38.0	30.1	27.4	27.4	27.4

TABLE 5

PLMRS AND PRIVATE RADIO ADJACENT CHANNELS

PLMRS Frequency (MHz)	Private Radio Service Frequency (MHz)	Private Use
152.03	152.0075 (SERS)	Paging
152.24	152.27 (TRS)	Base and Mobile
152.51	152.48 (BRS) *	Paging
152.84	152.87 (SIRS) & (MPRS)	Base and Mobile
454.025	454.00 (PRS)	Base and Mobile

Notes:

SERS-Special Emergency Radio Service.

TRS-Taxicab Radio Service.

BRS-Business Radio Service.

SIRS-Special Industrial Radio Service.

MPRS-Motion Picture Radio Service.

PRS-Petroleum Radio Service.

* and on a secondary basis SERS and Forest Products Radio Service, for base and mobile operations.

FOOTNOTES

[1] It should be noted that Section 22.506 must also be amended to allow for increases in ERP, even though such an amendment was not proposed by Telocator.

[2] Interference and service contours are defined in Section 22.504 of the Commission's Rules, and in the report by R. B. Carey entitled "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Radio Service" (Carey Report), FCC Report No. R-6406, June 1964.

[3] The scope of this *Notice* is limited to matters concerning the height and power of PLMRS stations. The issue of service gaps raised by Telecomm falls outside the scope of this proceeding.

[4] Skip interference is caused by the portion of radio waves that travel upward in space and reflect off the ionosphere back to the earth. The lower frequencies are more susceptible to skip interference.

[5] Continuous contours will be produced by using the procedures outlined in the Carey Report. The distance from the interfering base station to its interference contour along an individual radial can be found if the antenna radiation center HAAT and ERP along that radial are known. A distance along the radial is assumed and the interfering field strength is determined from the F(50,50) chart of Section 22.504. Next, the "R" value at this distance is determined from the Carey Report. The interfering field strength is compared to the desired field strength set forth in Section 22.504. If the ratio of desired-to-undesired fields is equal to "R," then the distance assumed is the distance to the interference contour. Different distances may be tried until "R" is met.

[6] Under our current rule, existing two-way systems in the 35 and 43 MHz band will not be protected from skip interference after June 30, 1988. *See* Section 22.501(a)(5)(iv) of the Commission's Rules.

[7] Channels of the private radio service are interleaved with PLMRS channels in the 35 and 43 MHz band. The interleaved structure for the 35 MHz band is shown in Table 1 of this *Notice*, and the structure for the 43 MHz band may be obtained by adding 8 MHz to the frequencies in Table 1.

[8] Tables 2, 3 and 4 of this *Notice* were created using the same formulas and assumptions used in CC Docket 80-189, which adopted the six-mile separation between systems. *See* Report and Order, CC Docket 80-189, 49 RR 2d 1541, 46 Fed. Reg. 38509 (1981), at Appendix E.

[9] In our study, we assume that the private radio system with a 31 dBu service contour is operating with a maximum height of 500 feet and a power of 500 Watts. The private mobile unit is assumed to have 65 dB of adjacent-channel rejection. We have determined that the ratio of desired-to-undesired field strengths is 21.6 dB from Figure 8 of the Carey Report. "Tu" of Figure 8 was set to zero since it is not of significance for the short distances involved here. The signal strength from the paging base station was determined using Bullington's field strength prediction methods. *See* Kenneth Bullington, "Radio Propagation at Frequencies above 30 Megacycles" (Bullington methods), *Proceedings of the I.R.E.*, October 1947, at pp. 1122-1136. For these calculations, the paging base station was located inside the protected service area of the private system where the maximum interference would be expected.

[10] This Commission has not approved a method for calculating the signal density from multiple co-channel transmitters in the PLMRS. See Carey Report, *supra*.

[11] See "Interference to Television Reception from Paging Systems," FCC Field Operations Bureau Information Bulletin FO-6, February 1986.

[12] We determined that the desired-to-undesired protection ratio was 75 dB from Figure 1, page 188, R.T. Buesing, "Modulation Methods and Channel Separation in the Land Mobile Service," *IEEE Transactions on Vehicular Technology*, Vol. VT-19, May 1970. We determined the protected signal level from the Carey Report to be 26 dBu for an interfering field strength not to exceed 101 dBu at the protected receiver. We used Bullington methods to determine path loss.

[13] By referring to various manufacturers' data sheets, we found the adjacent-channel selectivity to be between 75 and 90 dB. We chose 75 dB for a worst case analysis. We determined from the Carey Report the protected signal level to be 25 dBu for a field strength at the protected receiver not to exceed 100 dBu. We used Bullington methods to determine path loss.

[14] It appears that, as the HAAT increases, the two-to-ten mile average terrain, upon which the HAAT is based, has less effect on the propagation.

[15] *See* 47 C.F.R. Section 22.527.

[16] *Notice of Proposed Rulemaking*, General Docket No. 87-390, 2 FCC Rcd 6244, at para. 22 (1987).

[17] *See* "Radio Frequency Protection Guides" recommended in "American National Standard Safety Levels with respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz," ANSI C95.1-1982.

[18] Blanketing interference is defined as "[t]he action of a powerful radio signal or interference in rendering a receiving set unable to receive desired signals." *IEEE Standard Dictionary of Electrical and Electronic Terms*, The Institute of Electrical and Electronic Engineers, Inc., STD 100-1972.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Transmittal No. 220
Exchange Carrier Association,
Inc. Tariff F.C.C. No. 1

MEMORANDUM OPINION AND ORDER

Adopted: June 29, 1987; Released: June 30, 1987

By the Chief, Common Carrier Bureau:

1. The National Exchange Carrier Association, Inc. (NECA) has submitted a tariff transmittal requesting that its member, Puerto Rico Telephone Company (PRTC), be authorized to provide Feature Group B (FGB) access at discounted rates to multiple interexchange carriers (ICs). The tariff is scheduled to become effective on July 1, 1987 on 90 days' notice. The main point of contention is whether, given the differences between the levels of access available in Puerto Rico and those available in the mainland United States, the 55 percent difference in rates between premium and discounted access is warranted here.

2. PRTC is a government-owned local exchange carrier (LEC) which provides approximately 90 percent of Puerto Rico's intra-island telephone service.[1] It presently provides premium access for off-island (United States mainland and international) service to All America Cable and Radio (AAC&R), which is virtually the sole long distance service provider for Puerto Rico.[2] AAC&R provides circuits between Puerto Rico and the U.S. mainland, where the traffic is interconnected with the switching facilities of American Telephone and Telegraph Company (AT&T).

3. NECA's transmittal was opposed by AAC&R and AT&T, and MCI submitted a letter of support for the proposal. PRTC filed reply comments.

I. PLEADINGS

4. Both AAC&R and AT&T object to NECA's proposal, stating that PRTC's proposed discount access for prospective competitors of AAC&R is discriminatory and that the service proposed is not in fact as described in PRTC's tariff. They argue that the service offered to AAC&R is not true Feature Group C (FGC) access, and that the sevice proposed to be offered as FGB is not true FGB access. AAC&R Petition at 2-5; AT&T Petition at 4-5. Thus, AAC&R and AT&T assert, PRTC's proposed tariff violates Section 202(a) of the Communications Act (by discriminating in favor of the potential competitors by offering them unduly low rates) and Section 203(c) of the Act (by providing an inaccurate description of the service PRTC proposes to offer). AAC&R Petition at 5; AT&T Petition at 4.

5. AAC&R and AT&T further state that PRTC has failed to provide a "detailed explanation and justification" of its proposal, as was requested by this Bureau. [3] AAC&R and AT&T also state that PRTC's proposed change is not necessary to the development of competiton, as FGA access is already available, and that PRTC's offer that AAC&R could "trade in" its FGC access for the proposed discounted FGB access would harm the public by lessening service options and standards. AAC&R Petition at 11-12. Finally, AAC&R and AT&T argue that PRTC should not be allowed to predetermine the outcome of CC Docket No. 86-309, the proceeding regarding PRTC's participation in the long distance market and its provision of discounted FGB access, by offering service under this proposed tariff.[4] AAC&R Petition at 12-14; AT&T Petition at 6.

6. MCI's submission, a letter supporting the transmittal, characterizes PRTC's proposal as a minor tariff modification which constitutes an effort to introduce competitive alternative MTS service for off-island destinations.

7. PRTC's opposition to AT&T's and AAC&R's petitions describes the NECA transmittal as proposing nonstandard dialing arrangements for FGB non-premium access, and supports it as making possible meaningful competition in telecommunications services between Puerto Rico and off-island points as soon as possible. PRTC argues that Puerto Rico presents a situation different from that on the mainland, and dismisses as irrelevant those arguments based on comparisons of the two. PRTC Opposition at 2. PRTC denies that the proposed tariff revision in any way violates the Communications Act, *id.* at 2 *et seq.*, and states that acceptance of its proposed tariff revisions is wholly consistent with the pending Rule Making in CC Docket No. 86-309. *Id.* at 8-9.

II. DISCUSSION

8. Telecommunications in Puerto Rico differ significantly from those on the U.S. mainland. For example, the access provided to AAC&R as FGC access is markedly different from that provided to AT&T on the mainland.[5] PRTC's proposed FGB access also differs significantly from FGB access available on the mainland.[6] We also accept, at least in part, AAC&R's and AT&T's arguments that the differences between FGC and FGB as available on the mainland -- differences upon which the 55 percent discount is based -- are significantly greater than differences between FGC and FGB as offered by PRTC.[7] In these circumstances an investigation is warranted to determine whether the application of the 55 percent discount is consistent with the access charge rules and the Section 202(a) prohibition of charges that result in unreasonable discrimination.

9. PRTC argues that the public interest will be served by the immediate introduction of competition in long distance service, a goal the Commission has long espoused. AAC&R states that competition already exists, through the availability of FGA access. AAC&R Petition at 11. PRTC responds that, due primarily to the use by the vast majority of Puerto Rican customers of rotary dial telephones, FGA access is nearly unused. PRTC Opposition at 7-8. We note that the only voice service providers competing with AAC&R and AT&T's jointly-provided service are resellers using AT&T facilities and capacity. *See AT & T Acquisition Order* at n. 9.

10. In addition, despite PRTC's protestations that this tariff proceeding is completely separate from the ongoing Rule Making regarding PRTC's role in long distance service and equal access, many of the issues raised in that

proceeding are germane to our considerations here. In Docket 86-309, PRTC asks permission to enter the long distance market, assures the Commission that equal access will be provided by 1989, and proposes an interim access arrangement that is, in effect, the same as the proposal here before us. The question of justifying premium rates for FGC offered by PRTC, and of justifying the suggested 55 percent difference between that access and PRTC's proposed FGB, is important to both proceedings.

11. While we have no desire to delay unnecessarily the introduction of competition in off-island long distance voice services for Puerto Rico, we conclude that suspension is warranted in view of our serious reservations regarding the lawfulness of rates. We requested from NECA and PRTC that they provide a detailed explanation and justification of the pending proposal, and they have failed to do so.

12. Accordingly, we will suspend the effectiveness of this transmittal pending an investigation. Based on the present record, we find that there remains a significant question of whether the tariff offering would be discriminatory in providing a discounted rate to competitors of AAC&R in that PRTC will be furnishing to such competitors access which would be substantially equivalent to the access provided to AAC&R. The danger of competitive harm to AAC&R and the potential for unreasonable discrimination against certain ratepayers in violation of Section 202(a) of the Act are sufficient to warrant suspension of the tariff.

13. Because many of the issues here and much of the information we need are in fact under consideration in CC Docket No. 86-309, and because the conclusions the Commission reaches in that proceeding may well be determinative of some of the questions before us here, we shall hold in abeyance the scheduling of a direct case and the issuance of an Order in this proceeding pending adoption by the Commission of a Report and Order in that docket.

III. ORDERING CLAUSE

14. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201, 202, 203, 204(a) and 205 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 154(j), 201, 202, 203, 204(a) and 205, that Exchange Carrier Association Tariff F.C.C. No. 1, Transmittal No. 220, IS SUSPENDED pending investigation to resolve certain issues.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Puerto Rico Communications Authority (PRCA), which, like PRTC, is owned by the Commonwealth of Puerto Rico, provides the reminaing 10 percent. Puerto Rico purchased PRTC in 1974 from All America Cable and Radio (AAC&R).

[2] Feature Group A (FGA) access is available through PRTC, but because of various characteristics of the Puerto Rico market, it is little used. While MCI Telecommunications, Inc., Comserv, Telecom Plus, CALLS, CALL U.S., Inc., Comex and TDX Systems Inc. provide services that nominally compete with AAC&R's off-island MTS service, they are all resellers providing service on AT&T facilities. Thus, AAC&R has no actual, facilities-based competitor for this service. AT&T Acquisition of ITT Communications Services, Inc. Subsidiaries, *et al.*, File No. ENF-87-07, released June 26, 1987 (*AT & T Acquisition Order*).

[3] PRTC originally submitted its tariff proposal on March 10, 1987, with a request to have it filed on short notice. The request was opposed by AAC&R and AT&T, and supported by MCI; PRTC submitted reply comments to the oppositions. By letter of March 18, 1987, this Bureau denied the requested special permission (Application No. 79), stating that "detailed explanation and justification": should be submitted in support of a refiling of the tariff under the notice period established in Part 61 of the Commission's Rules, 47 C.F.R. Part 61.

[4] Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service off the Island of Puerto Rico, CC Docket No. 86-309, Notice of Proposed Rule Making, 104 FCC 2d 1275 (1986).

[5] In view of the discrepancies between mainland and Puerto Rico access descriptions and options, we cannot accept without further investigation the PRTC assertion that whatever is provided to the monopoly long distance carrier before the entry of competition is defined as FGC and therefore premium access.

[6] Neither FGC nor FGB access, as available from PRTC, offers Automatic Number Identification (ANI). Both offer only customer-dialed-operator-serviced (CDOS), not direct dial (DD), calling. The existing FGC offers three-digit access codes for long distance dialing, while the new FGB would offer five-digit codes. It is clear that FGC and FGB, as available from PRTC, are not as dissimilar as are FGC and FGB as offered on the mainland.

[7] For example, differences in the number of digits a customer must dial in order to place a long distance call can be significant; such considerations played a major part in the Commission's access charge proceeding. The assignment of a 55 percent discount for non-premium access was based in part on the fact that AT&T customers dialed 10 digits to place a call, while customers of AT&T's competitors dialed 22 or 23 digits. MTS and WATS Market Structure, CC Docket No. 78-72 (Phase I), Reconsideration Order, 97 FCC 2d 682 (1983), at para. 102. As noted above, in Puerto Rico, AAC&R has three-digit codes, and the proposed FGB carriers would have five-digit codes. The distinction between "premium" and "discounted" access is thus much smaller in Puerto Rico than on the mainland.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 79-105

In the Matter of

Detariffing the Installation
and Maintenance of
Inside Wiring

MEMORANDUM OPINION AND ORDER

Adopted: March 11, 1988 **Released: March 15, 1988**

By the Commission:

I. INTRODUCTION

1. In the *Inside Wiring Reconsideration Order*,[1] we affirmed our prior preemption of state regulation of inside wiring installation and maintenance.[2] The People of the State of California and the Public Utilities Commission of the State of California (collectively, "CPUC"), and the National Association of State Utility Consumer Advocates ("NASUCA") have petitioned us for reconsideration of that action. The Attorney General of the State of California has filed in support of CPUC's petition. The American Telephone and Telegraph Company ("AT&T") and the North American Telecommunications Association ("NATA") have filed oppositions to the petitions.

II. BACKGROUND

2. The preemptive action which CPUC and NASUCA challenge was taken in the *Second Report and Order* in Docket No. 79-105. [3] While neither CPUC nor NASUCA petitioned for reconsideration of that *Report and Order*, twelve petitions were filed. One of those petitions, filed by the New York State Department of Public Service (NYDPS), challenged our preemption of state regulation of inside wiring installation and maintenance. NYDPS argued that this preemptive action was inconsistent with Section 2(b)(1) of the Communications Act of 1934, as amended (the "Communications Act" or the "Act").[4] Alternatively, NYDPS argued that the preemptive action was improper even if not inconsistent with Section 2(b)(1). NYDPS maintained that continued state regulation of inside wiring services would not prevent the achievement of any overriding federal policy.[5]

3. In the *Inside Wiring Reconsideration Order*, we undertook two related lines of inquiry in response to NYDPS' arguments. First, we examined the nature of the functions telephone companies perform when they install or maintain inside wiring. We did so because Section 2(b)(1) applies only to common carriers and only in relation to activities that are properly classified as common carrier communication services.[6] We concluded that because inside wiring installation and maintenance are not common carrier communication services, which are subject to Title II of the Act,[7] those activities are not subject to the limitations Section 2(b)(1) of the Act places on our jurisdiction.

4. Second, we examined whether it would be possible for a federal program for the competitive, deregulated provision of inside wiring services to coexist with a state system for the regulated, carrier provision of those services. The Supreme Court had recognized in *Louisiana Public Service Commission v. FCC* [8] that Section 2(b)(1) does not give primacy to state regulation if different federal and state systems could not coexist. We concluded that it is impossible for divergent federal and state programs for inside wiring to coexist on a long-term basis, without requiring consumers to obtain separate interstate and intrastate systems of inside wiring. The need for a single, unitary program for the provision of inside wiring services formed the second independent ground for affirming the prior preemption of state regulation of inside wiring services.[9]

5. Despite their prior failure to petition for reconsideration of the *Second Report and Order*, CPUC and NASUCA asked us to stay our preemption of state regulation of inside wiring installation and maintenance. Their stay requests, which were filed subsequent to the release of the *Inside Wiring Reconsideration Order*, were based on the premise that this Commission had preempted the states from imputing the costs and revenues from detariffed inside wiring services when they regulate the rates for tariffed, intrastate services. In the *Stay Denial Order*,[10] we determined that our decisions in this docket do not preempt such state actions and accordingly denied the stay requests. The *Report and Order* in Docket 86-111,[11] which was released after the release of the the *Stay Denial Order*, confirmed that we have not preempted the states from imputing the costs and revenues from detariffed services or other nonregulated activities when the states regulate tariffed, intrastate services.[12]

III. THE PARTIES' POSITIONS

6. CPUC and NASUCA claim that our preemption of state regulation of inside wiring installation and maintenance is inconsistent with the jurisdictional limitation of Section 2(b)(1) of the Act. They state that in the *Second Report and Order*, this Commission attempted to require the states to treat inside wiring services as nonregulated or "below-the-line" activities for intrastate ratemaking purposes. CPUC and NASUCA argue that *Louisiana Public Service Commission v. FCC* squarely prohibits any such assertion of preemptive authority over inside wiring for intrastate ratemaking purposes. They maintain: (a) inside wiring installation and maintenance are common carrier communication services[13] within the scope of Section 2(b)(1); and (b) even if those services are not common carrier communication services, they are matters "for or in connection with" intrastate service within the scope of that provision.[14] According to CPUC and NASUCA, neither our desire to further our policy choices nor the fact that inside wiring is jointly used for interstate and intrastate services justifies requiring state regulators to use FCC-prescribed accounting methods when they set intrastate rates.

7. In addition to challenging our asserted attempt to require the states to treat detariffed inside wiring installation and maintenance as nonregulated activities for intrastate ratemaking purposes, NASUCA argues that any FCC

preemption of state regulation of intrastate communication services violates Section 2(b)(1). NASUCA contends that state commissions should retain authority to tariff inside wiring services. NASUCA argues that questions regarding the availability of competitive suppliers of inside wiring services, the rates for those services, and the adequacy of those services can best be resolved at the state level.

8. The California Attorney General, in supporting the petition of CPUC, also contends that our preemption of state regulation of inside wiring services is inconsistent with Section 2(b)(1). The California Attorney General asserts that this Commission has attempted to confer power upon itself, contrary to the Supreme Court's decision in *Louisiana Public Service Commission*. In the California Attorney General's view, the record before us in this proceeding does not support our conclusions that deregulation will create a competitive market for inside wiring services and that competition would lower consumers' long-term inside wiring costs.

9. AT&T and NATA argue that our preemptive action is entirely consistent with Section 2(b)(1). AT&T states that CPUC's petition assumes incorrectly that we have preempted the states from imputing inside wiring costs and revenues in their regulation of intrastate common carrier communication services. AT&T claims that the evidence before us in this proceeding compelled our finding that inside wiring installation and maintenance are not common carrier communication services. According to AT&T, that finding and our finding that inside wiring is jointly and inseverably used for both interstate and intrastate services independently mandate FCC preemption. NATA states that preemption is necessary to preserve the customers' rights to remove, replace, rearrange, and maintain inside wiring that was originally installed pursuant to carrier tariff[15] and to connect FCC-registered customer premises equipment to the interstate telephone network.

IV. DISCUSSION

10. We normally would not entertain a petition for further reconsideration of a Rule Making decision in these circumstances. Section 1.429(i) of this Commission's Rules[16] provides in pertinent part:

> Any order disposing of a petition for reconsideration which modifies rules adopted by the original order is, to the extent of such modification, subject to reconsideration in the same manner as the original order. Except in such circumstances, a second petition for reconsideration may be dismissed by the staff as repetitious.

Although the *Inside Wiring Reconsideration Order* modified the *Second Report and Order* in several respects, these petitioners do not challenge any of those modifications and do not contend that any additional modifications are necessary or desirable in light of the modifications that we made in the *Inside Wiring Reconsideration Order*. Petitioners seek reconsideration of determinations in the *Second Report and Order* that were reaffirmed in the *Inside Wiring Reconsideration Order*. We have, nevertheless, decided to exercise our discretion to consider petitioners' arguments with respect to our decision to preempt state regulation of the installation and maintenance of inside wiring because of the specific circumstances in this proceeding. The Supreme Court's decision in the *Louisiana Public Service Commission* case was issued after the *Second Report and Order* and before the *Inside Wiring Reconsideration Order*. Parties to this proceeding did not have an opportunity to comment upon our analysis of *Louisiana Public Service Commission* because we did not present such an analysis until we adopted the *Inside Wiring Reconsideration Order*. We have accordingly decided that it would be appropriate to examine these petitioners' arguments on that subject.

11. To a large extent, petitioners' arguments against our preemptive action are based on the premise that we have precluded the states from imputing the costs and revenues from detariffed inside wiring services when the states regulate the rates for tariffed intrastate services. We have not taken such a preemptive action.[17] During the period since CPUC and NASUCA filed their reconsideration petitions, we have repeatedly made clear that, as long as they do not directly regulate detariffed inside wiring services, the states are free to impute costs and revenues associated with such services in the regulation of intrastate rates for tariffed common carrier communication services.[18] Accordingly, we need not address the petitioners' arguments regarding a purported preemption of intrastate accounting or ratemaking matters, as we have not preempted such matters.

12. However, petitioners also dispute the grounds on which we relied for the preemptive action affirmed in the *Inside Wiring Reconsideration Order*. As previously noted, our decision to reaffirm our preemptive action was based upon two independent grounds. Petitioners would be obliged to refute both grounds in order to change the result. Petitioners have refuted neither ground.

13. Our first ground for concluding in the *Inside Wiring Reconsideration Order* that Section 2(b)(1) of the Act does not bar our preemptive deregulation of the installation and maintenance of inside wiring by telephone companies was that those services, even when offered by firms that provide other services subject to Title II of the Act, are not common carrier communication services to which Section 2(b)(1) applies.[19] Both petitioners and the California Attorney General dispute this analysis. CPUC contends that this analysis must be wrong because the *Louisiana Public Service Commission* opinion does not "state or imply that if such service[s] were detariffed, federal preemption would be permissible."[20] The Supreme Court presumably did not discuss the preemptive deregulation of services that are not common carrier communication services because that question was not presented in that case. We draw no conclusion from that lack of discussion.

14. CPUC also argues that there is no evidence that the installation and maintenance of inside wiring are other than common carrier services. We disagree. The present situation is analogous to that of customer premises equipment (CPE) in 1980, when we preemptively detariffed CPE in our *Computer II* proceeding,[21] an action upheld by the United States Court of Appeals for the District of Columbia Circuit in its *CCIA* decision.[22] Like the provision of CPE at issue in that case, the installation and maintenance of inside wiring are activities that can be severed from underlying common carrier transmission services, and are subject to competition.[23] As they did in our detariffing of CPE in *Computer II*, these factors indicate that Title II-type regulation of the installation and maintenance of inside wiring is not necessary for, and indeed impedes, the effective functioning of the interstate telecommunications network, and they support our conclusion

in the *Inside Wiring Reconsideration Order* that the installation and maintenance of inside wiring are not common carrier communications services within the scope of either Title II or Section (b)(1).[24]

15. For a number of reasons, we are not convinced by the claims of CPUC that inside wiring installation and maintenance are not provided by telephone companies except on a common carrier basis.[25] First, the materials CPUC provided with its petition that purport to support this claim relate only to inside wiring maintenance.[26] Second, even in those materials, it is apparent that telephone companies such as Pacific Bell and GTE offer varied and individualized opportunities to their customers for inside wiring maintenance. The materials show that the telephone companies in question offer customers the choice of either enrolling in a "service program" for inside wiring maintenance, which costs from $.95 to $1.95 per month,[27] or paying charges for inside wiring maintenance based on an individualized rate.[28] These service options permit customers to tailor the terms on which they choose to receive inside wiring maintenance from these telephone companies or from competing sources based on their individual preferences and assessments of their maintenance needs.[29] In addition, as competition for inside wiring services increases, as we expect it will, even more service options will be available to consumers, from telephone companies and other sources.[30] Finally, we are aware of no characteristics of inside wiring installation and maintenance that require common carrier regulation, since such services, like CPE provision, are severable from the common carrier transmission services that use them, and can be provided effectively in a competitive market by multiple suppliers who respond to particularized consumer demand. Accordingly, we confirm our finding that the installation and maintenance of inside wiring are not common carrier communications services.

16. Both petitioners and the California Attorney General also contend that inside wiring installation and maintenance are within the scope of Section 2(b)(1), even if those activities are not common carrier communications services, because Section 2(b)(1) restricts this Commission's jurisdiction with respect to "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service . . . ." We addressed similar arguments, regarding the scope of our ability to preempt state regulation of enhanced services, in the *Computer III Phase I Reconsideration Order*.[31] We apply the reasoning of that *Order* to reject petitioners' broad claim that Section 2(b)(1) applies to inside wiring installation and maintenance services because they are "for or in connection with" intrastate communication service. This language in Section 2(b)(1) is virtually identical to language in Sections 201(b) and 202(a) that describes our regulatory authority over common carriers under Title II of the Act.[32] This use of almost identical language leads us to conclude that Section 2(b)(1) limits our jurisdiction over only those services when offered on an intrastate basis that would be subject to our Title II jurisdiction when offered on an interstate basis.[33] Thus, a finding that a service, when offered on an interstate basis, is not subject to Title II of the Act necessarily means that the same service is not subject to Section 2(b)(1) when offered on an intrastate basis. Accordingly, we reaffirm our holding that Section 2(b)(1) is not a bar to our preemption of state regulation of services, such as inside wiring installation and maintenance, that are not subject to Title II regulation if performed on an interstate basis.

17. Our decision to preempt also rests on an independent ground. Even if Section 2(b)(1) did apply to inside wiring services, preemption would be appropriate. In view of the inseverable nature of the installation and maintenance of inside wiring, federal policy must prevail if divergent federal and state regulation is not feasible.[34] The Supreme Court's *Louisiana Public Service Commission* opinion expressly recognized that this principle is well established.[35] However, petitioners contend that, despite the fact that inside wiring is jointly used for interstate and intrastate services, these services can be separated into interstate and intrastate components for jurisdictional purposes, and, accordingly, the states retain authority to tariff intrastate inside wiring services.[36] We disagree. State regulation of the "intrastate portion" of the installation and maintenance of inside wiring would conflict with, and negate, our federal detariffing policies. We have found that competition, unhindered by regulation of rates or terms and conditions of service, will produce the most efficient installation and maintenance of inside wiring. As we found in the *Inside Wiring Reconsideration Order*, precisely because it is a "practical and economic impossibility" to separate physically the installation and maintenance of inside wiring into interstate and intrastate portions,[37] any state regulation of the provision of jointly used inside wiring would directly conflict with our detariffing of inside wiring installation and maintenance that seeks to ensure the competitive provision of inside wiring.[38]

18. In the *Inside Wiring Reconsideration Order*, we noted that, as with CPE, the inclusion of charges for inside wiring services in rates for transmission services would influence the consumer's choice of service providers by reducing direct charges for inside wiring imposed by the telephone company.[39] Even for charges for inside wiring service that are unbundled from rates for transmission services, state rate regulation of some designated "intrastate" portion of inside wiring, or of a telephone company's installation and maintenance practices for such portion, could lead to either over- or under-pricing of such services compared to prices that would prevail in the absence of such regulation. Such a result would interfere with the operation of this market that we have found will function most efficiently on a freely competitive basis.[40] Moreover, tariffing of some "intrastate" portion of inside wiring installation and maintenance would eliminate the ability of telephone companies to respond flexibly to market demands. Similarly, state regulation of the terms and conditions of service of some "intrastate" portion of inside wiring or its associated installation and maintenance would necessarily control the "interstate" portion of such wiring and services, directly conflicting with our policy finding that such conditions are best determined by the workings of the competitive market. Thus, the functioning of free markets as a means of maximizing efficiency in the provision of inside wiring installation and maintenance, which we have adopted as a matter of federal policy, cannot coexist with more restrictive state common carrier regulation of the same facilities and services.

19. NASUCA nevertheless asserts that state regulators, rather than this Commission, should decide whether inside wiring will be deregulated.[41] But we have adopted a sound federal policy of detariffing that both reflects current mar-

ket conditions and will promote the availability of inside wiring services at reasonable prices from a variety of sources. Our policy most effectively promotes continued growth in competition in this market, to the benefit of consumers. We appreciate the states' concerns, but we do not expect the problems they have described to arise with any frequency. If problems do arise that warrant a reexamination of our policies, we would be prepared to take whatever action that might be appropriate at that time.

V. ORDERING CLAUSE

20. Accordingly, IT IS ORDERED, pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, that the subject petitions for reconsideration filed by the People of the State of California and the Public Utilities Commission of the State of California, and by the National Association of State Utility Consumer Advocates, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

FOOTNOTES

[1] *Memorandum Opinion and Order*, Docket No. 79-105, Detariffing the Installation and Maintenance of Inside Wiring, 1 FCC Rcd 1190 (1986), *petition for review docketed sub nom.* NARUC v. FCC, No. 86-1687 (D.C. Cir. Dec. 11, 1986).

[2] For a definition of inside wiring, *see Inside Wiring Reconsideration Order*, 1 FCC Rcd at 1197 n.1. We have classified inside wiring further into "complex" inside wiring, which includes generally any inside wiring that connects station components to each other or to common equipment of a private branch exchange (PBX) or key system, and "simple" inside wiring, which is any other inside wiring. *Id.* at n.3.

[3] Detariffing the Installation and Maintenance of Inside Wiring, 51 Fed. Reg. 8498 (1986), *recon. denied in pertinent part, Inside Wiring Reconsideration Order, supra, petition for review docketed sub nom.* NARUC v. FCC, No. 86-1687 (D.C. Cir. Dec. 11, 1986).

[4] 47 U.S.C. § 152(b)(1).

[5] *Inside Wiring Reconsideration Order*, 1 FCC Rcd at 1191, 69.

[6] *Id.* at 1192, 614, *citing* National Ass'n of Regulatory Utility Commissioners v. FCC, 525 F.2d 630, 647 (D.C. Cir.) (*NARUC I*), *cert. denied*, 425 U.S. 992 (1976).

[7] *Inside Wiring Reconsideration Order*, 1 FCC Rcd at 1192, 616.

[8] 106 S. Ct. 1890 (1986).

[9] *Inside Wiring Reconsideration Order*, 1 FCC Rcd at 1193, 618.

[10] *Memorandum Opinion and Order*, Docket No. 79-105, Detariffing the Installation and Maintenance of Inside Wiring, 2 FCC Rcd 349 (1986) (*Stay Denial Order*).

[11] Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298 (1987) (*Joint Cost Order*), *aff' d in pertinent part on recon.*, 2 FCC Rcd 6283 (1987), *petitions for further recon. pending.*

[12] *Joint Cost Order*, 2 FCC Rcd at 1310, 688.

[13] In support of its claim that there is no evidence suggesting that inside wiring installation and maintenance are being provided by telephone companies on other than a common carrier basis, CPUC attaches to its petition copies of notices Pacific Bell and the General Telephone Company (GTE) sent to the public. CPUC argues that the notices show that these telephone companies are offering standard, uniform service options for inside wiring maintenance to residential and business customers, and are not tailoring these options to the individualized service needs each of their customers. CPUC Petition at 6 and Exhibit A.

[14] CPUC Petition at 6, *citing Louisiana Public Service Commission, supra*, at 1899; *see also* NASUCA Petition at 4.

[15] *See Inside Wiring Reconsideration Order*, 1 FCC Rcd at 1195-96, 635.

[16] 47 C.F.R. § 1.429(i).

[17] *See Stay* Denial Order, 2 FCC Rcd at 350, ¶6.

[18] *See id.; Joint Cost Order*, 2 FCC Rcd at 1309-10, ¶¶82-93.

[19] *Inside Wiring Reconsideration Order*, 1 FCC Rcd at 1192, 6614-16. In that Order we noted that a telephone company does not become a common carrier with respect to each telecommunications-relatedservice it may provide simply by undertaking to provide some services on a common carrier basis. Id. at 1192, ¶15, citing National Ass'n of Regulatory Utility Commissioners v. FCC, 533 F.2d 601, 608 (D.C. Cir. 1976) *(NARUC II);* Computer and Communications Indus. Ass'n v. FCC, 693 F.2d 198, 210 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983) *(CCIA v. FCC).*

[20] CPUC Petition at 5.

[21] Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980); *modified on recon.*, 84 FCC 2d 50 (1980); *modified on further recon.*, 88 FCC 2d 512 (1981); *aff'd sub nom. CCIA v. FCC, supra; aff'd on second further recon.*, FCC 84-190 (released May 4, 1984).

[22] *CCIA v. FCC, supra.*

[23] As we found in the *Second Report and Order* in this proceeding, many companies appear to be providing inside wiring services, and customers are able to install and maintain simple inside wiring themselves. Id. at ¶¶30- 31.

[24] 1 FCC Rcd at 1192, ¶¶13-16.

[25] *See* n.13, *supra.*

[26] *See* CPUC Petition at Exhibit A.

[27] Customers enrolled in such a program would not be charged an additional fee for actual maintenance performed on their inside wiring. Similar "service program" arrangements are customarily offered by unregulated companies for competitively available consumer goods ranging from appliances to automobiles. For example, Sears typically offers a service contract on its dishwashers at a price, selected by Sears, for all purchasers or owners of its dishwashers, but this does not transform the maintenance of dishwashers into a common carrier activity.

[28] The GTE materials included in Exhibit A to the CPUC petition indicate that the charge for a "repair call" could be "a minimum of $85," suggesting that this charge may vary on an individualized basis. Similarly, the Pacific Bell materials refer to repair charges of "at least $65" for business customers and $65 for residential customers, displaying similar opportunities for individualized services and pricing. Moreover, simply because a telephone company sets uniform prices for inside wiring maintenance services does not make such services into a common carrier offering. For example, firms offering CPE are likely to maintain price lists setting uniform charges for at least some of the simpler forms of CPE. The existence of such uniform prices does not transform CPE into a common carrier offering.

[29] We note that all the materials in Exhibit A to the CPUC petition acknowledge the availability of inside wiring maintenance from competitive sources such as electricians or the customers themselves.

[30] Indeed, the installation and maintenance of inside wiring is closely akin to the installation and maintenance of electrical wiring or even plumbing in a premises, both of which provide conduits for the delivery of public utility services or goods in a premises, but neither of which is itself tariffed as a public utility service.

[31] Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 2 FCC Rcd 3035, 3060-61, ¶¶77-81, *further recon.* FCC 88-9 (released Feb. 18, 1988).

[32] 47 U.S.C. §§ 201(b), 202(a); *see also* 47 U.S.C. § 203(c).

[33] Section 2(a) of the Act, 47 U.S.C. § 152(a), is broader in scope than Title II. Section 2(a) extends our jurisdiction to all "persons" engaged in interstate communication by wire or radio. We exercised that power when we precluded carriers that are engaged in interstate communication from tariffing inside wiring installation and maintenance services with any state.

[34] CCIA v. FCC, *supra;* North Carolina Utilities Comm'n v. FCC, 552 F.2d 1036 (4th Cir.), cert. denied, 434 U.S. 874 (1977)*(NCUC II);* North Carolina Utilities Comm'n v. FCC, 537 F.2d 787 (4th Cir.), *cert. denied,* 429 U.S. 1027 (1976)*(NCUC I).*

[35] 106 S. Ct. at 1902 n.4.

[36] *See* CPUC Petition at 7-8, NASUCA Petition at 4-5.

[37] 1 FCC Rcd at 1193, 618, *quoting NCUC II,* 552 F.2d at 1043.

[38] *See* 1 FCC Rcd at 1193, 618.

[39] *Id.* at n.46.

[40] *See Computer III Phase II Order,* 2 FCC Rcd 3072, 3078, 648, *recon.* FCC 88-10 (released Feb. 18, 1988).

[41] NASUCA says: "The nature and extent of competitive alternatives for inside wire installation and the necessity for protecting ratepayers from unfair rates and/or inadequate service if inside wire installation and maintenance is deregulated are matters which can best be determined at the state level." NASUCA Petition at 5.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The Prescription of Revised Percentages of Depreciation pursuant to the Communications Act of 1934, as amended for:

Alascom, Inc.
The Chesapeake and Potomac Telephone Company of Virginia
The Chesapeake and Potomac Telephone Company of West Virginia
Continental Telephone Company of Virginia
General Telephone Company of Ohio
General Telephone Company of the South
Indiana Bell Telephone Company, Incorported
New England Telephone and Telegraph Company
Ohio Bell Telephone Company
Pacific Northwest Bell Telephone Company
Southern New England Telephone Company
South Central Bell Telephone Company

ORDER

Adopted: January 14, 1988; Released: January 21, 1988

By the Commission: Commissioner Dennis dissenting in part.

I. INTRODUCTION

1. Twelve domestic carriers have filed requests with this Commission for changes in their depreciation rates. In this Order we consider the reports underlying the carriers' filings and the comments of the interested parties, and we prescribe the depreciation rates and amortizations listed in the Appendix.

II. BACKGROUND

2. This Commission is authorized to prescribe depreciation rates for telephone common carriers as part of our broader ratemaking responsibilities under the Communications Act of 1934.[1] Depreciation is the mechanism through which the carriers are allowed to include in their operating expenses a percentage of their investment in equipment and facilities used to provide telephone service. Depreciation rates are prescribed on the basis of estimates of the equipments' expected rate of loss in value incurred in connection with its prospective retirement in the course of service from causes which can be forecast with a reasonable approach to accuracy.[2] Depreciation is a very important factor in the determination of a carrier's revenue requirement. It has two primary effects: First, the depreciation expense is included directly as a part of a carrier's revenue requirement; second, the accumulation of the depreciation expense, which is commonly described as the depreciation reserve,[3] is a deduction from the rate base and therefore is a determinant of the carrier's return and federal income tax.

III. REVIEW PROCEDURES

3. It is our practice to review and revise, as necessary, depreciation rates for approximately one-third of the larger FCC subject domestic carriers each year. This year the twelve carriers listed in the caption submitted reports proposing new depreciation rates based upon revised parameter estimates (i.e., equipment service life, net salvage and mortality dispersion patterns). All of these carriers except New England Telephone in Rhode Island,[4] General of the South in South Carolina, and Pacific Northwest Bell in Idaho filed for reserve imbalance amortizations for the majority of their accounts.

4. The Bureau reviewed the carriers' reports and proposals and prepared its own preliminary parameter and amortization proposals. These proposals were then transmitted by letter to each carrier and respective state commission. Some of the state commissions also proposed preliminary recommendations. Subsequently, the Bureau conducted meetings and telephone conversations with carrier representatives and state commission staffs to discuss the parameters which should be used to determine depreciation rates and expense levels.

5. Following the discussions with the carriers and state commissions, the Bureau reevaluated its preliminary recommendations, and issued a Public Notice dated October 7, 1987, entitled, "Depreciation Rate Prescriptions Proposed for Domestic Telephone Companies - Notice of Opportunity to Comment." The Bureau transmitted to each carrier and respective state commission a copy of the Public Notice and a list of the parameters used to calculate its recommended depreciation rates and amortizations.

6. Comments were filed by General of the South, Indiana Bell, the Indiana Office of Utility Consumer Counselor, Mountain Bell, Northwestern Bell and Pacific Northwest Bell (the U S West companies), New England Telephone, Ohio Bell, Southwestern Bell, Southern New England Telephone, the Massachusetts Attorney General, and Western Union.

IV. DISCUSSION

7. The issues raised during the review process relate to the life and salvage estimates underlying the rates, the use of amortizations, and the effective date of the new rates and amortizations. In our *Amortization NPRM* [5] we requested comments on our proposed amortization policy as well as the effective date for this policy. These issues were addressed and resolved in our *Amortization Order* [6] and, therefore, will not be addressed here.[7] In this Order we address life and salvage issues only.

A. *Life and Salvage Estimates*

8. Three-way agreement (i.e., agreement among the carriers and the staffs of the state commissions and the Common Carrier Bureau staff) was reached regarding all depreciation parameters for all accounts for the following carriers and jurisdictions: Alascom, Inc.; C & P of Virginia; C & P of West Virginia; Continental of Virginia, General of Ohio; General of the South in Alabama, Geor-

gia, Kentucky, North Carolina, Tennessee, Virginia, and West Virginia; New England Telephone in New Hampshire and Rhode Island; Ohio Bell; Pacific Northwest Bell in Oregon and Washington; Southern New England and South Central Bell in Alabama, Kentucky, Mississippi, and Tennessee. Three-way agreement was reached for all accounts except three for Indiana Bell. No objections to the agreed upon parameters were raised in the comments. We have reviewed the carriers' reports and our staff's analysis of the filings, and the comments filed in response to the public notice. We conclude on the basis of the record that we should adopt the depreciation parameters underlying the rates and amortizations contained in the appendix. Accordingly, we adopt these parameters. We discuss below our conclusions regarding the accounts and carriers for which either three-way agreement was not reached or objecting comments were received.

9. Three-way agreement was not reached for the following three Indiana Bell accounts: COE Step-by-Step, COE Crossbar, and Large PBX. For the COE Step-by-Step and Crossbar accounts, Indiana Bell and the Indiana Public Service Commission proposed to maintain the depreciation rates currently prescribed. The currently prescribed rates are based upon switch replacement plans submitted with Indiana Bell's 1984 depreciation rate report and are inconsistent with its current switch replacement plans provided during the course of the current review. Indiana Bell argues that, in this case, its current replacement plans should not be used to establish its depreciation rates because various factors[8] may cause it to change its plans and accelerate its current replacement schedules. This argument is unpersuasive. Virtually every carrier for which we prescribe rates, including Indiana Bell, has long advocated the use of their most up-to-date plans as the primary determinant of depreciation rates for electromechanical switching equipment. In fact, we do give a great amount of weight to carrier switch replacement plans to the extent they are credible. We are well aware that all of the major local exchange carriers (including Indiana Bell) do not establish office replacement plans without carefully considering the forces which Indiana Bell is suggesting may substantially alter its plans. In addition, Indiana Bell's COE Step-by-Step and COE Crossbar replacement plans are so rapid[9] that it is unlikely a substantial near-term acceleration will take place. Finally, we see no reason to use rates based upon a 1984 plan when a 1987 plan is available. Therefore, we adopt the depreciation rates proposed by the Bureau which are based upon Indiana Bell's current replacement plans.

10. For the Large PBX account, Indiana Bell and the Indiana Commission similarly propose to maintain the currently prescribed depreciation rate. In this case the use of the current depreciation rate would be inconsistent with the most recently established life and salvage parameters and the carrier's current actual reserve balance for this account. Again we reject the carrier's proposal and prescribe rates based upon the most recent life and salvage estimates.

11. Two-way agreements between the Bureau and the carriers were reached in all accounts for New England Telephone in Maine, Massachusetts,[10] and Vermont, and South Central Bell in Louisiana. The Louisiana and Massachusetts commissions chose not to participate in either the depreciation discussions or comment process, so three-way agreement could not be reached for these jurisdictions. Maine and Vermont[11] participated in the meetings but selected parameters for intrastate ratemaking purposes which differ, for the most part, from those agreed to by the carriers and the Bureau. These states offered no objections, however, to the (two-way agreement) parameters proposed by the Bureau in the Public Notice.

12. In arriving at its rate recommendations for the carriers and jurisdictions discussed in the preceding paragraph, the Bureau used the same techniques that it used for the other carriers under review this year. Furthermore, the Bureau's recommendations for these carriers and states are consistent with the life and salvage factors it recommended for the other carriers and states. We see no reason to deviate from these recommendations. Finally, no objections were raised regarding these two-way agreements in the comments. Accordingly, we adopt the Bureau's proposals for New England Telephone in Maine, Massachusetts, and Vermont, and South Central Bell in Louisiana.

B. *Alascom, Inc.*

13. Alascom is an interexchange carrier, not a local exchange carrier. As a result, the five-year amortization policy adopted for the local exchange carriers does not apply to it. Nevertheless, Alascom proposed five-year reserve imbalance amortizations for most of its accounts.[12] Alascom's amortization proposal was discussed at the three-way meeting. That review demonstrated that Alascom does have a substantial reserve deficiency, and that competition in the Alaskan interstate telecommunications market is substantial. Further, the Bureau's studies show that the continued application of the remaining-life method will not fully resolve Alascom's reserve deficiency for many years.[13] As a result, Alascom believes that the delayed recovery of the deficiency, coupled with the competitive nature of its business, may unreasonably increase the risk of the ultimate, full recovery of its investment.

14. No commenters objected to the amortization proposal for Alascom in the Bureau's Public Notice. As an alternative to the current methods, and for essentially the same reasons as stated in our *1985 Depreciation Rates Order*,[14] we have decided to use an amortization procedure similar to that which we recently approved for AT&T-ISD to resolve Alascom's reserve imbalance. Therefore, in order to allow Alascom a reasonable opportunity to recover its depreciation reserve imbalances, we depart from current depreciation methods, and adopt the reserve imbalance amortizations shown in the Appendix to this Order.

C. *Effective Dates*

15. Our *Amortization Order* established a five-year amortization program effective January 1, 1987. Accordingly, we adopt January 1, 1987 as the effective date of the rates and amortizations in the Appendix to this Order. As stated in the *Amortization Order*, a carrier disadvantaged by this effective date may petition for waiver of the requirement. The Common Carrier Bureau, via delegated authority (*Amortization Order* at para. 27), will act on such petitions.

D. *Submission of Whole - Life Depreciation Parameters*

16. In the depreciation prescription orders which we have approved since our decision in *Property Depreciation*,[15] we have required that depreciation filings include whole-life rates so that we could determine the size of the

depreciation reserve imbalance and the speed with which our actions were resolving the imbalance. Because of our continued interest in these matters, we require carriers named herein to continue to file whole-life rates that are consistent with the prescribed rates until notified to the contrary.

E. *Conclusion*

17. Having considered the carriers' proposals, the views and recommendations of the states, the responses to the Public Notice, and the recommendations of the Bureau, we adopt the rates, amortizations, and effective dates listed in the Appendix.[16]

V. ORDERING CLAUSE

18. ACCORDINGLY IT IS ORDERED, pursuant to Sections 1, 4(i), 201-205 and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 201-205 and 220(b), that the percentages of depreciation and amortization amounts set forth in the Appendix to this Order ARE PRESCRIBED effective on the dates listed.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

FOOTNOTES

[1] 47 U.S.C. Section 220(b) (1982)

[2] 47 C.F.R. Section 31.01-3(n)

[3] The depreciation reserve is the accumulation of the depreciation expenses plus net salvage less retirements.

[4] New England Telephone - Rhode Island filed for reserve imbalance amortizations on December 17, 1987. The December filing superceded its July 2, 1987 filing.

[5] Amortization of Depreciation Reserve Imbalances of Local Exchange Carriers, *Notice of Proposed Rule Making*, 2 FCC Rcd 6473 (1987) (*Amortization NPRM*)

[6] Amortization of Depreciation Reserve Imbalances of Local Exchange Carriers, FCC 88-6 (released January 21, 1988) (*Amortization Order*).

[7] The issues raised by the Indiana Office of Utility Consumer Counselor, New England Telephone, Southwestern Bell, the U S West companies and Western Union are not further discussed in this *Order* because they have been resolved in the *Amortization Order*.

[8] These factors include competition and changing customer demands. *See* Indiana Bell Comments at 2.

[9] Using Indiana Bell's current replacement schedules, the average remaining-life for these accounts are very short: 4.9 years for Large SxS, 3.8 years for Small SxS, and 3.4 years for Crossbar.

[10] Although the Massachusetts Department of Public Utilities chose not to participate, the Massachusetts Attorney General's office submitted its proposal to the Bureau and participated in the three-way meeting. This proposal was discussed at the conference and was considered in detail by the Bureau in reaching the recommendations proposed in the Public Notice. In response to the Public Notice, the Attorney General submitted comments which did not address the specific parameter proposals in the Public Notice, but, rather New England Telephone's original proposals as presented in its 1987 depreciation report.

[11] Two Vermont organizations participated in the review process, the Vermont Department of Public Service and the Vermont Public Service Board.

[12] Alascom proposed that the net book cost for the COE Electromechanical Account and the imbalance for the Mainframe Computer Account be amortized over a three year period. These dying account amortizations are consistent with Commission policy and practice adopted in Prescription of Revised Percentages of Depreciation Pursuant to Section 220(b) of the Communications Act of 1934, as amended, for: American Telephone and Telegraph Company -- Long Lines Department, 96 FCC 2d 257 (1983), *recon. denied*, FCC 84-505 (released October 31, 1984), *aff' d sub nom.* Southern Bell Telephone and Telegraph Co. v. FCC, 781 F. 2d 209 (D.C. Cir. 1986).

[13] According to the Bureau's studies more than half of Alascom's plant investment has an average remaining life in excess of nine years.

[14] The Prescription of Revised Depreciation Rates for AT&T Communications-Interstate Division, 101 FCC 2d 137 (1985) (*1985 Depreciation Rates Order*).

[15] Amendment of Part 31 (Uniform System of Accounts for Class A and Class B Telephone Companies), 83 FCC 2d 267 (1980) *Property* Depreciation) reconsideration, 87 FCC 2d 916 (1981), Supplemental Opinion and Order, 87 FCC 2d 1112 (1981).

[16] As noted above, the amortizations for the LECs prescribed herein are based on our conclusions in the Amortization Order.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
ALASCOM, INCORPORATED

Effective January 1, 1987

Rate Category Description		Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#	First Year ELG
	A	(years) B	(%) C	(%) D	(%) E	($) F	
212	BUILDINGS	22.0	5.0	24.9	3.2	1182	
212	TOWERS	15.0	-42.0	50.7	6.1	201	
221	COE - MANUAL	6.1	-5.0	55.2	8.2	310	
221	COE - ELECTROMECHANICAL	-	-5.0	96.1	-	@	
221	COE - DIGITAL SWITCHING	13.7	0.0	14.3	6.3	218	
221	COE - AUTOVON SWITCHING	5.4	-5.0	47.7	10.6	-160	
221	COE - TELEX SWITCHING	10.0	-5.0	44.7	6.0	19	
221	COE - CIRCUIT EQUIPMENT	8.9	5.0	31.4	7.1	851	1987
221	COE - O.C.E.	7.7	5.0	25.5	9.0	18	1987
221	COE - PICTUREPHONE	6.9	0.0	26.6	10.6	20	1987
231	STATION APPARATUS	3.1	5.0	5.6	28.8	0	
234	LARGE PBX	5.4	3.0	44.8	9.7	59	
235	PUBLIC TELEPHONE - COIN	5.0	10.0	22.6	13.5	0	
235	PUBLIC TELEPHONE - COINLES	5.0	10.0	10.7	15.9	0	
241	POLE LINES & GUYED TOWERS	5.2	-25.0	67.0	11.2	376	1987
242	AERIAL CABLE	4.7	0.0	-3.6	22.0	0	1987
242	UNDERGROUND CABLE	22.0	-10.0	13.2	4.4	1	1987
242	BURIED CABLE	13.7	-5.0	28.2	5.6	126	1987
242	SUBMARINE CABLE	9.4	-2.0	77.4	2.6	-61	1987
242	UNDERGROUND CONDUIT	36.0	-3.0	12.6	2.5	1	1987
248	EARTH STATIONS	5.6	5.0	41.4	9.6	-1504	
248	SATELLITE	4.4	0.0	48.5	11.7	0	
261	FURNITURE&OFFICE EQUIP.	5.9	15.0	37.6	8.0	184	1987
261	COMPUTER EQUIPMENT 1	3.0	0.0	13.3	28.9	503	1987
261	MINICOMPUTERS	3.6	5.0	47.3	13.3	0	1987
262	OTHER COMMUNICATIONS EQUIP	6.4	3.0	57.9	6.1	14	1987
264	OTHER WORK EQUIPMENT	5.9	5.0	40.2	9.3	10	1987
264	VEHICLES	5.7	13.0	39.7	8.3	-6	1987
264	AIRCRAFT	1.5	40.0	55.6	2.9	0	

@ Amortization of monthly net book over a three year period.

1 Amortization of January 1, 1987 reserve imbalance over three years.

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
THE CHESAPEAKE & POTOMAC TELEPHONE COMPANY OF VIRGINIA

Effective January 1, 1987

Rate Category	Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($)
	A	B	C	D	E	F
212	BUILDINGS	32.0	2.0	20.2	2.4	226
221	COE - CUSTOMERS' PREMISES	4.9	1.0	69.7	6.0	0
221	COE - STEP-BY-STEP	1.6	-6.0	21.3	52.9	0
221	COE - CROSSBAR	2.4	-6.0	87.6	7.7	7276
221	COE - CIRCUIT	7.6	0.0	26.0	9.7	967
221	COE - CIRCUIT DDS	8.5	-4.0	27.9	9.0	-22
221	COE - RADIO	11.2	-6.0	31.0	6.7	-112
221	COE - ELECTRONIC ANALOG	9.3	2.0	30.8	7.2	3714
221	COE - ELECTRONIC DIGITAL	12.9	4.0	10.8	6.6	824
231	STA APP - TELE & MISC	6.3	1.0	44.3	8.7	-432
234	LARGE PBX - ELECTRONIC	4.9	1.0	69.7	6.0	75
234	LARGE PBX - OTHER	3.0	-6.0	42.6	21.1	-110
234	LARGE PBX - DDS	5.0	2.0	45.5	10.5	-55
235	PUBLIC TELEPHONE	7.5	1.0	39.0	8.0	-500
241	POLE LINES	21.0	-41.0	34.2	5.1	2859
242	AERIAL CABLE	14.7	-13.0	32.4	5.5	1436
242	UNDERGROUND CABLE	21.0	-23.0	22.1	4.8	4412
242	BURIED CABLE	15.7	-9.0	24.9	5.4	0
242	SUBMARINE CABLE	12.9	-8.0	51.4	4.4	1
244	UNDERGROUND CONDUIT	43.0	0.0	13.9	2.0	87
261	F&OE - FURNITURE	12.5	10.0	17.7	5.8	0
261	F&OE - COMPUTERS	3.7	12.0	41.9	12.5	0
262	OTHER COMM EQUIPMENT	7.1	8.0	32.6	8.4	0
264	V&OWE - MOTOR VEHICLES	4.5	15.0	36.1	10.9	-144
264	V&OWE - OTHER WORK EQPT	12.8	6.0	27.5	5.2	-196

* For accounts in which amortization of reserve imbalances are shown in Column (F), Column (D) contains the book reserve adjusted to recognize the previously ordered amortization.

Remaining amortization ordered in FCC 87-32, released January 29, 1987, is amortized over five years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
THE CHESAPEAKE & POTOMAC TELEPHONE COMPANY OF WEST VIRGINIA

Effective January 1, 1987

	Rate Category Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($)
	A	B	C	D	E	F
212	BUILDINGS	27.0	4.0	21.8	2.7	-210
221	COE - STEP-BY-STEP	2.5	-6.0	61.2	17.9	0
221	COE - CROSSBAR	2.9	-5.0	49.3	19.2	0
221	COE - CIRCUIT	7.0	3.0	29.8	9.6	3997
221	COE - CIRCUIT DDS	8.4	-4.0	22.0	9.8	-3
221	COE - RADIO	11.5	-12.0	26.9	7.4	-161
221	COE - ELECTRONIC ANALOG	11.4	2.0	33.0	5.7	2154
221	COE - ELECTRONIC DIGITAL	13.0	5.0	9.2	6.6	48
231	STA APP - TELE & MISC	7.3	4.0	46.6	6.8	-127
234	LARGE PBX - OTHER	3.3	-4.0	83.2	6.3	0
234	LARGE PBX - DDS	5.5	2.0	34.6	11.5	-1
235	PUBLIC TELEPHONE	7.0	4.0	41.0	7.9	-5
241	POLE LINES	18.8	-45.0	35.3	5.8	304
242	AERIAL CABLE	16.4	-20.0	34.4	5.2	7577
242	UNDERGROUND CABLE	19.5	-5.0	29.2	3.9	1066
242	BURIED CABLE	11.2	-7.0	39.7	6.0	5458
242	SUBMARINE CABLE	9.9	0.0	52.9	4.8	-7
244	UNDERGROUND CONDUIT	38.0	-8.0	21.7	2.3	468
261	F&OE - FURNITURE	9.5	3.0	20.8	8.0	69
261	F&OE - COMPUTERS	4.3	2.0	24.5	17.1	0
262	OTHER COMM EQUIPMENT	7.6	5.0	40.2	7.2	2
264	V&OWE - MOTOR VEHICLES	3.8	13.0	46.4	10.7	0
264	V&OWE - OTHER WORK EQPT	8.5	20.0	24.5	6.5	-30

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
CONTINENTAL TELEPHONE COMPANY OF VIRGINIA

Effective January 1, 1987

Rate Category	Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
	A	(years) B	(%) C	(%) D	(%) E	($) F
212	BUILDINGS	33.0	6.0	18.3	2.3	-132
212	BUILDINGS-LEASEHOLD	5.8	0.0	44.8	9.5	-5
221	COE - SXS & OTHER	2.4	2.0	66.2	13.3	0
221	COE - SWITCHBOARD-CORD	0.5	0.0	72.4	55.2	0
221	COE - SWITCHBOARD-TOPS	12.0	0.0	0.0	8.3	0
221	COE - ANALOG ELECTRONIC	1.2	3.0	58.7	31.9	0
221	COE-MICROWAVE DIGITAL	10.7	0.0	26.2	6.9	4
221	COE-POWER	9.4	2.0	31.2	7.1	-91
221	COE-CIRCUIT	6.2	10.0	32.0	9.4	282
221	COE-ANI/TICKETING	2.1	2.0	82.8	7.2	0
221	COE-DIGITAL ELECTRONIC	12.4	2.0	16.4	6.6	-480
235	PUBLIC TELEPHONE	6.5	-5.0	38.7	10.2	-9
241	POLE LINES	16.4	-55.0	59.9	5.8	97
242	AERIAL CABLE	17.2	-6.0	31.5	4.3	-63
242	UNDERGROUND CABLE	19.9	0.0	27.8	3.6	94
242	BURIED CABLE	16.6	4.0	23.6	4.4	1641
242	SUBMARINE CABLE	15.6	0.0	49.7	3.2	-9
243	AERIAL WIRE	-	-	66.5	-	●
244	UNDERGROUND CONDUIT	37.0	0.0	26.0	2.0	3
261	FURN.&OFFICE EQUIP.	15.3	11.0	31.8	3.7	-31
261	F & F INFO. SYS.	4.8	5.0	4.2	18.9	0
262	OTHER COMM. EQUIP.	7.5	0.0	31.8	9.1	-12
264	VEHICLES	6.0	20.0	0.0	13.3	-14
264	OTHER WORK EQUIPMENT	13.7	0.0	23.9	5.6	-83

● Amortization ordered in FCC 84-620, released December 19, 1984, is continued.

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GENERAL TELEPHONE COMPANY OF OHIO

Effective January 1, 1987

Rate Category	Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($)
	A	B	C	D	E	F
212	BUILDINGS	17.6	8.0	35.0	3.2	152
221	MANUAL SW EQ	0.8	-1.0	101.0	0.0	0
221	ELECTRO SW EQ	4.5	0.0	47.0	11.8	0
221	AUTO MSG REC EQ	2.7	-1.0	27.2	27.3	0
221	CIRCUIT EQ	7.1	4.0	33.0	8.9	2924
221	RADIO EQ	5.6	-1.0	52.1	8.7	10
221	ANALOG SW EQ	8.7	-1.0	31.4	8.0	883
221	DIGITAL SW EQ	12.9	3.0	11.0	6.7	-159
235	COIN/COINLESS TEL	7.3	1.0	32.7	9.1	-30
241	POLE LINES	20.0	-60.0	41.7	5.9	-55
242	AERIAL CABLE	18.7	-44.0	49.8	5.0	3248
242	FIB OPT AERIAL CABLE	16.4	-27.0	5.2	7.4	3
242	UNDERGROUND CABLE	20.0	-32.0	41.7	4.5	413
242	FIB OPT UDRGRD CABLE	18.8	-10.0	3.9	5.6	0
242	BURIED CABLE	14.7	-11.0	36.8	5.0	2261
242	FIB OPT BURIED CABLE	21.0	-6.0	4.8	4.8	0
242	SUBMARINE CABLE	12.5	0.0	51.9	3.8	-2
243	AERIAL WIRE	8.2	-67.0	77.6	10.9	113
244	UNDERGROUND CONDUIT	39.0	-12.0	23.9	2.3	-6
261	FURN & OFC EQ	7.9	5.0	23.5	9.1	208
261	COMPUTERS	4.5	5.0	21.3	16.4	0
262	CO OFFICIAL EQ	5.4	1.0	27.5	13.2	-573
264	MOTOR VEHICLES	3.8	15.0	45.0	10.5	0
264	MOT VEH SHOP EQ	10.3	0.0	25.4	7.2	-20
264	TOOLS & OWE	10.3	10.0	31.3	5.7	-53

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GENERAL TELEPHONE COMPANY OF THE SOUTH - ALABAMA

Effective January 1, 1987

Rate Category	Description	Average Remaining Life (years) B	Future Net Salvage (%) C	12/31/86 Book Reserve* (%) D	Remaining Life Rate (%) E	Annual Amort. Expense# ($) F
A						
212	BUILDINGS	30.0	10.0	15.4	2.5	-70
221	COE - MANUAL SW EQUIP	1.5	0.0	100.0	0.0	0
221	COE - AUTO SW EQUIP	4.6	1.0	35.6	13.8	0
221	COE - AUTO MSG REC EQUIP	4.2	-5.0	28.6	18.2	0
221	COE - DIGITAL AUTO SW EQ	14.3	5.0	9.6	6.0	0
221	COE - CIRCUIT EQUIP	8.1	5.0	30.5	8.0	84
221	COE - RADIO EQUIP	6.5	-1.0	45.4	8.6	3
231	STA APP - TELEPHONE	-	1.0	69.8	14.2	0
231	STA APP - TELETYPEWRITER	-	5.0	-121.8	10.6	0
234	LARGE PBX	-	2.0	94.0	15.3	0
235	PUBLIC TELEPHONE EQUIP	6.0	-3.0	34.2	11.5	-30
241	POLE LINES	14.5	-32.0	30.4	7.0	-32
242	AERIAL CABLE	17.6	-20.0	32.7	5.0	114
242	AERIAL FIBER	22.0	-16.0	9.7	4.8	3
242	UNDERGROUND CABLE	19.3	-8.0	24.6	4.3	80
242	UNDERGROUND FIBER	21.0	-8.0	9.4	4.7	2
242	BURIED CABLE	12.5	-10.0	22.4	7.0	475
242	BURIED FIBER	16.3	-5.0	6.1	6.1	2
242	SUBMARINE CABLE	19.4	-5.0	12.4	4.8	0
243	AERIAL WIRE	3.8	-37.0	19.1	31.0	0
244	UNDERGROUND CONDUIT	46.0	-1.0	22.8	1.7	-4
261	FURNITURE	11.4	6.0	21.4	6.4	2
261	OFFICE MACHINES	8.5	20.0	22.1	6.8	-8
261	DATA PROCESSING EQUIP	4.2	0.0	23.2	18.3	0
262	COMPANY OFFICIAL EQUIP	7.0	-3.0	24.6	11.2	-67
264	MOTOR VEHICLES	4.7	25.0	34.2	8.7	0
264	MOTOR VEHICLE SHOP EQUIP	6.0	2.0	28.8	11.5	1
264	TOOLS & OTHER WORK EQUIP	13.3	3.0	20.5	5.8	-22

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GENERAL TELEPHONE COMPANY OF THE SOUTH - GEORGIA

Effective January 1, 1987

Rate Category Description		Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($)
	A	B	C	D	E	F
212	BUILDINGS	30.0	0.0	18.1	2.7	-27
221	MANUAL SW EQUIP	0.5	-5.0	105.0	0.0	0
221	AUTO SW EQUIP	2.6	0.0	49.2	19.5	0
221	AUTO MSG REC EQUIP	3.3	-2.0	44.6	17.4	0
221	DIGITAL AUTO SW EQUIP	12.7	5.0	6.3	7.0	78
221	CIRCUIT EQUIP	9.3	20.0	15.6	6.9	835
221	RADIO EQUIP	7.8	-4.0	43.0	7.8	12
231	TELEPHONE STA APPAR	-	-	32.1	12.8	0
231	TELETYPEWRITER EQUIP	-	-	22.2	30.3	0
231	RADIO TELEPHONE EQUIP	-	-	0.3	-	●
234	LARGE PBX	-	-	81.6	14.8	0
235	PUBLIC TELEPHONE EQUIP	6.0	-3.0	41.2	10.3	-27
241	POLE LINES	13.1	-40.0	36.1	7.9	135
242.1	AERIAL CABLE	14.1	-22.0	36.7	6.0	289
242.2	UNDERGROUND CABLE	11.7	-11.0	35.5	6.5	257
242.3	BURIED CABLE	12.3	-6.0	23.5	6.7	943
242.4	SUBMARINE CABLE	17.3	0.0	33.5	3.8	0
243	AERIAL WIRE	5.3	-50.0	84.4	12.4	170
244	UNDERGROUND CONDUIT	48.0	-1.0	17.4	1.7	-24
261	FURNITURE	11.3	1.0	23.9	6.6	22
262	COMPANY OFFICIAL EQUIP	7.0	-3.0	24.6	11.2	-170
264	MOTOR VEHICLES	4.3	14.0	37.8	11.2	0
264	MOTOR VEHICLE SHOP EQUIP	11.0	2.0	18.1	7.3	2
264	OTHER WORK EQPT	10.4	3.0	28.2	6.6	-12

● Amortization ordered in FCC 87-32, released January 29, 1987, is continued.

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

\# Reflects amortization of the January 1, 1987, reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GENERAL TELEPHONE COMPANY OF THE SOUTH - KENTUCKY

Effective January 1, 1987

Rate Category	Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($)
	A	B	C	D	E	F
212	BUILDINGS	26.0	8.0	22.9	2.7	272
221	MANUAL SW EQUIP	0.0	0.0	0.0	0.0	0
221	DIGITAL MANUAL SW EQUIP	9.1	-2.0	48.0	5.9	-200
221	AUTO SW EQUIP	5.0	0.0	37.8	12.4	0
221	AUTO MSG REC EQUIP	5.5	0.0	52.2	8.7	-182
221	DIGITAL AUTO SW EQUIP	13.1	0.0	12.7	6.7	539
221	CIRCUIT EQUIP	8.1	3.0	32.7	7.9	1063
221	RADIO EQUIP	10.9	0.0	32.3	6.2	-107
235	PUBLIC TELEPHONE EQUIP	6.0	-3.0	23.8	13.2	-96
241	POLE LINES	16.2	-25.0	24.4	6.2	-26
242	AERIAL CABLE	15.8	-25.0	32.5	5.9	2219
242	AERIAL FIBER	24.0	-2.0	4.1	4.1	11
242	UNDERGROUND CABLE	22.0	0.0	26.7	3.3	117
242	UNDERGROUND FIBER	24.0	-2.0	4.1	4.1	6
242	BURIED CABLE	11.8	5.0	22.2	6.2	203
242	SUBMARINE CABLE	14.1	-5.0	10.7	6.7	0
243	AERIAL WIRE	4.5	-45.0	23.6	27.0	0
244	UNDERGROUND CONDUIT	43.0	-1.0	22.0	1.8	18
261	FURNITURE	13.7	10.0	27.9	4.5	34
261	OFFICE MACHINES	7.1	10.0	13.0	10.8	3
261	DATA PROCESSING EQUIP	4.1	7.0	10.5	20.1	0
262	COMPANY OFFICIAL EQUIP	7.0	-3.0	17.2	12.3	-313
264	MOTOR VEHICLES	4.1	12.0	46.2	10.2	0
264	MOTOR VEHICLE SHOP EQUIP	6.2	0.0	35.4	10.4	2
264	TOOLS & OTHER WORK EQPT	10.7	0.0	26.7	6.9	10

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GENERAL TELEPHONE COMPANY OF THE SOUTH - NORTH CAROLINA

Effective January 1, 1987

	Rate Category Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
	A	(years) B	(%) C	(%) D	(%) E	($) F
212	BUILDINGS	34.0	10.0	9.8	2.4	-38
221	COE - MANUAL SW EQUIP	0.0	0.0	0.0	0.0	0
221	COE - DIGITAL MANUAL SW EQ	15.5	0.0	26.2	4.8	-18
221	COE - AUTO SW EQUIP	-	35.0	94.7	-	@
221	COE - AUTO MSG REC EQUIP	-	0.0	10.6	-	@
221	COE - DIG AUTO SW EQUIP	13.0	2.0	11.9	6.6	106
221	COE - CIRCUIT EQUIP	7.2	5.0	19.0	10.6	556
221	COE - RADIO EQUIP	6.1	0.0	52.3	7.8	9
231	TELEPHONE STA APPAR	-	-	55.4	12.8	0
231	TELETYPEWRITER EQUIP	-	-	77.4	7.6	0
234	LARGE PBX	-	-3.0	99.3	20.5	0
235	PUBLIC TELEPHONE EQUIP	6.0	-3.0	33.6	11.6	-37
241	POLE LINES	15.8	-25.0	28.6	6.1	-37
242	AERIAL CABLE	18.4	2.0	27.9	3.8	-604
242	AERIAL FIBER	19.0	-5.0	3.7	5.3	-1
242	UNDERGROUND CABLE	20.0	-5.0	24.2	4.0	58
242	UNDERGROUND FIBER	24.0	-5.0	4.2	4.2	6
242	BURIED CABLE	13.8	-2.0	15.6	6.3	170
242	BURIED FIBER	16.1	-5.0	4.4	6.2	-2
242	SUBMARINE CABLE	15.3	0.0	5.0	6.2	0
242	AERIAL WIRE	4.6	-65.0	71.2	20.4	0
244	UNDERGROUND CONDUIT	44.0	-1.0	13.9	2.0	-46
261	FURNITURE	9.7	20.0	15.3	6.7	-71
261	OFFICE MACHINES	7.0	20.0	31.7	6.9	27
261	DATA PROCESSING EQUIP	4.4	0.0	23.5	17.4	0
262	COMPANY OFFICIAL EQUIP	7.0	-3.0	22.8	11.5	-347
264	MOTOR VEHICLES	5.5	26.0	23.6	9.2	-61
264	AIRCRAFT	7.0	60.0	14.5	3.6	4
264	MOTOR VEHICLE SHOP EQUIP	6.2	2.0	30.5	10.9	1
264	TOOLS & OTHER WORK EQUIP	13.0	2.0	22.2	5.8	-29

@ Amortizations ordered in FCC 85-656, released December 31, 1985, are continued.

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GENERAL TELEPHONE COMPANY OF THE SOUTH - TENNESSEE

Effective January 1, 1987

Rate Category Description		Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($)
	A	B	C	D	E	F
212	BUILDINGS	30.0	10.0	18.5	2.4	-15
221	COE - DIGITAL MANUAL SW EQ	-	35.0	27.2	-	●
221	COE - AUTO SW EQUIP	5.2	-3.0	62.8	7.7	268
221	COE - AUTO MSG REC EQUIP	5.8	-5.0	40.3	11.2	94
221	COE - DIGITAL AUTO SW EQ	15.9	1.0	16.6	5.2	14
221	COE - CIRCUIT EQUIP	8.7	10.0	29.7	6.9	114
221	COE - RADIO EQUIP	7.8	1.0	33.6	8.4	11
231	STA APP - TELEPHONE	4.0	0.0	48.5	12.9	0
234	LARGE PBX	4.0	0.0	81.8	4.6	0
235	PUBLIC TELEPHONE EQUIP	6.0	-3.0	35.7	11.2	-38
241	POLE LINES	15.4	-27.0	27.9	6.4	44
242	AERIAL CABLE	16.1	-20.0	36.7	5.2	313
242	UNDERGROUND CABLE	21.0	-6.0	23.6	3.9	20
242	BURIED CABLE	12.2	-5.0	18.4	7.1	121
243	AERIAL WIRE	3.5	-55.0	60.3	27.1	0
244	UNDERGROUND CONDUIT	46.0	-1.0	24.6	1.7	-3
261	FURNITURE	11.0	10.0	22.9	6.1	3
261	OFFICE MACHINES	6.5	0.0	51.1	7.5	3
261	DATA PROCESSING EQUIP	4.3	0.0	32.1	15.8	0
262	COMPANY OFFICIAL EQUIP	7.0	-3.0	23.8	11.3	-27
264	MOTOR VEHICLES	4.8	13.0	46.6	8.4	0
264	MOTOR VEHICLE SHOP EQUIP	6.2	3.0	26.2	11.4	0
264	TOOLS & OTHER WORK EQUIP	13.2	2.0	24.9	5.5	-15

● Amortization ordered in FCC 85-656, released December 31, 1985, is continued.

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GENERAL TELEPHONE COMPANY OF THE SOUTH - VIRGINIA

Effective January 1, 1987

Rate Category	Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($)
	A	B	C	D	E	F
212	BUILDINGS	34.0	0.0	22.0	2.3	11
221	AUTO SW EQUIP	4.4	0.0	56.9	9.8	0
221	AUTO MSG REC EQUIP	5.0	0.0	56.6	8.7	0
221	DIGITAL AUTO SW EQUIP	12.8	5.0	10.0	6.6	-6
221	CIRCUIT EQUIP	10.5	10.0	30.9	5.6	71
221	RADIO EQUIP	6.9	-2.0	50.1	7.5	9
231	TELEPHONE STA APPAR	-	-	54.3	9.3	0
234	LARGE PBX	-	-	97.5	16.4	0
235	PUBLIC TELEPHONE EQUIP	6.0	-3.0	49.7	8.9	-23
241	POLE LINES	18.6	0.0	15.5	4.5	-66
242	AERIAL CABLE	12.9	-10.0	36.9	5.7	81
242	UNDERGROUND CABLE	17.7	-5.0	25.0	4.5	9
242	BURIED CABLE	10.9	-2.0	22.8	7.3	21
243	AERIAL WIRE	7.9	-40.0	68.6	9.0	44
244	UNDERGROUND CONDUIT	39.0	-1.0	23.0	2.0	1
261	FURNITURE	9.6	0.0	50.9	5.1	1
262	COMPANY OFFICIAL EQUIP	7.0	-3.0	25.5	11.1	-4
264	MOTOR VEHICLES	4.3	7.0	49.2	10.2	0
264	OTHER WORK EQPT	8.7	5.0	33.6	7.1	-2

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GENERAL TELEPHONE COMPANY OF THE SOUTH - WEST VIRGINIA

Effective January 1, 1987

Rate Category Description		Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
	A	(years) B	(%) C	(%) D	(%) E	($) F
212	BUILDINGS	42.0	0.0	18.4	1.9	-6
221	DIGITAL MANUAL SW EQUIP	15.1	5.0	11.0	5.6	-57
221	AUTO SW EQUIP	4.3	0.0	38.4	14.3	0
221	AUTO MSG REC EQUIP	2.9	0.0	19.9	27.6	0
221	DIGITAL AUTO SW EQUIP	13.1	5.0	15.2	6.1	59
221	CIRCUIT EQUIP	10.1	16.0	25.0	5.8	123
221	RADIO EQUIP	7.5	-4.0	51.4	7.0	8
231	TELEPHONE STA APPAR	-	-	41.1	12.9	0
231	TELETYPEWRITER EQUIP	-	-	79.0	21.7	0
234	LARGE PBX	-	-	92.5	13.7	0
235	PUBLIC TELEPHONE EQUIP	6.0	-3.0	38.6	10.7	20
241	POLE LINES	15.6	5.0	20.1	4.8	-114
242	AERIAL CABLE	16.1	-10.0	33.0	4.8	401
242	UNDERGROUND CABLE	23.0	-21.0	34.8	3.7	31
242	BURIED CABLE	13.3	-10.0	24.4	6.4	80
243	AERIAL WIRE	6.2	-40.0	84.3	9.0	50
244	UNDERGROUND CONDUIT	47.0	-1.0	21.9	1.7	-13
261	FURNITURE	13.0	2.0	23.7	5.7	0
262	COMPANY OFFICIAL EQUIP	7.0	-3.0	31.6	10.2	-57
264	MOTOR VEHICLES	3.9	9.0	58.5	8.3	0
264	MOTOR VEHICLE SHOP EQUIP	10.5	5.0	21.7	7.0	1
264	OTHER WORK EQPT	10.4	3.0	27.9	6.6	-19

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
INDIANA BELL TELEPHONE COMPANY, INCORPORATED

Effective January 1, 1987

	Rate Category Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
	A	(years) B	(%) C	(%) D	(%) E	($) F
212	BLDGS - BUILDINGS	30.0	5.0	19.2	2.5	1439
221	COE - STEP-BY-STEP	4.1	-3.0	66.8	8.8	0
221	COE - CROSSBAR	3.4	-2.0	77.9	7.1	0
221	COE - CIRCUIT - OTHER	6.3	3.0	31.2	10.4	6010
221	COE - CIRCUIT - DDS	7.8	-4.0	25.2	10.1	-65
221	COE - RADIO	5.6	-9.0	43.4	11.7	0
221	COE - ELECTRONIC ANALOG	9.9	3.0	33.9	6.4	8430
221	COE - ELECTRONIC DIGITAL	12.9	3.0	8.3	6.9	-524
234	LARGE PBX - OTHER	3.6	-3.0	73.4	8.2	0
235	PUBLIC TELEPHONE	2.8	-74.0	60.0	40.7	0
241	POLE LINES	16.4	-77.0	58.6	7.2	247
242	AERIAL CABLE	14.9	-8.0	35.5	4.9	16
242	UNDERGROUND CABLE	17.7	-6.0	31.7	4.2	4857
242	BURIED CABLE	15.8	-9.0	30.7	5.0	2630
242	SUBMARINE CABLE	10.1	-1.0	61.8	3.9	2
244	UNDERGROUND CONDUIT	47.0	-24.0	23.5	2.1	1249
261	F&OE - STOREROOM & OTHER	14.4	5.0	24.8	4.9	-35
261	F&OE - COMPUTERS & AMA	3.5	3.0	41.7	15.8	0
262	OTHER COMM EQUIPMENT	5.6	-6.0	43.6	11.1	-287
264	V&OWE - MOTOR VEHICLES	3.6	15.0	40.6	12.3	0
264	V&OWE - OTHER WORK EQPT	7.3	3.0	36.5	8.3	404

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY - MAINE

Effective January 1, 1987

Rate Category Description		Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($)
	A	B	C	D	E	F
212	BLDGS - BUILDINGS	22.0	5.0	31.6	2.9	266
221	COE - STEP-BY-STEP	3.3	-6.0	73.9	9.7	0
221	COE - CROSSBAR	2.8	-3.0	55.1	17.1	0
221	COE - CIRCUIT - OTHER	7.8	-2.0	32.3	8.9	4458
221	COE - CIRCUIT - DDS	4.8	-4.0	46.3	12.0	0
221	COE - RADIO	8.0	-5.0	36.3	8.6	-278
221	COE - ELECTRONIC	10.5	2.0	20.3	7.4	1021
231	STA APP - TELETYPEWRITER	6.8	9.0	-107.0	29.1	-3
231	STA APP - TELE & MISC	9.9	1.0	-9.1	10.9	-37
234	LARGE PBX - OTHER	4.7	-2.0	43.6	12.4	0
234	LARGE PBX - DDS	4.3	2.0	32.3	15.3	0
235	PUBLIC TELEPHONE	5.3	1.0	47.0	9.8	337
241	POLE LINES	19.5	-47.0	36.2	5.7	-364
242	AERIAL CABLE - EXCHANGE	14.3	-21.0	35.2	6.0	4752
242	AERIAL CABLE - TOLL	12.0	-14.0	41.6	6.0	1159
242	UNDERGROUND CABLE - EXCH	18.3	-28.0	31.2	5.3	790
242	UNDERGROUND CABLE - TOLL	14.0	-14.0	34.2	5.7	254
242	BURIED CABLE - EXCHANGE	14.6	-6.0	27.9	5.3	354
242	BURIED CABLE - TOLL	11.3	-2.0	51.9	4.4	84
242	SUBMARINE CABLE - EXCH	11.3	-5.0	53.9	4.5	-46
242	SUBMARINE CABLE - TOLL	13.2	-5.0	54.2	3.8	-11
243	AERIAL WIRE	5.5	-44.0	57.6	15.7	-130
244	UNDERGROUND CONDUIT	49.0	-5.0	15.4	1.8	187
261	F&OE - FURN & OFF EQPT	12.1	9.0	27.0	5.3	7
261	F&OE - COMPUTERS & AMA	2.2	10.0	32.0	26.4	0
262	OTHER COMM EQUIPMENT	6.7	7.0	30.0	9.4	195
264	V&OWE - MOTOR VEHICLES	2.4	10.0	74.3	6.5	0
264	V&OWE - OTHER WORK EQPT	7.1	8.0	28.1	9.0	-17

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY - MASSACHUSETTS

Effective January 1, 1987

	Rate Category Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
	A	(years) B	(%) C	(%) D	(%) E	($) F
212	BLDGS - BUILDINGS	23.0	10.0	31.2	2.6	220
221	COE - STEP-BY-STEP	3.5	-6.0	60.8	12.9	0
221	COE - CROSSBAR	1.5	-4.0	57.3	31.1	0
221	COE - CIRCUIT - OTHER	7.2	0.0	32.1	9.4	8037
221	COE - CIRCUIT - DDS	6.5	-2.0	26.5	11.6	-1025
221	COE - RADIO	8.9	-2.0	42.3	6.7	-393
221	COE - ELECTRONIC	10.8	3.0	26.9	6.5	14687
231	STA APP - TELETYPEWRITER	4.9	9.0	49.2	8.5	0
231	STA APP - TELE & MISC	4.2	1.0	62.7	8.6	0
234	LARGE PBX - OTHER	4.7	-5.0	51.3	11.4	0
234	LARGE PBX - DDS	5.9	-1.0	24.1	13.0	-146
235	PUBLIC TELEPHONE	5.0	1.0	38.4	12.1	0
241	POLE LINES	23.0	-84.0	52.3	5.7	3005
242	AERIAL CABLE - EXCHANGE	17.3	-21.0	35.9	4.9	4773
242	AERIAL CABLE - TOLL	14.5	-5.0	44.7	4.2	889
242	UNDERGROUND CABLE - EXCH	17.9	-15.0	35.8	4.4	8286
242	UNDERGROUND CABLE - TOLL	15.2	0.0	34.6	4.3	2135
242	BURIED CABLE - EXCHANGE	19.3	-6.0	29.5	4.0	-46
242	BURIED CABLE - TOLL	15.9	-3.0	51.8	3.2	-69
242	SUBMARINE CABLE - EXCH	11.2	-10.0	71.9	3.4	-120
242	SUBMARINE CABLE - TOLL	16.2	-10.0	61.8	3.0	-43
243	AERIAL WIRE	6.2	-46.0	71.6	12.0	-68
244	UNDERGROUND CONDUIT	45.0	-5.0	24.2	1.8	2129
261	F&OE - FURN & OFF EQPT	9.6	15.0	21.0	6.7	650
261	F&OE - COMPUTERS & AMA	3.0	5.0	39.1	18.6	0
262	OTHER COMM EQUIPMENT	6.5	8.0	26.3	10.1	-1611
264	V&OWE - MOTOR VEHICLES	2.5	12.0	72.5	6.2	0
264	V&OWE - OTHER WORK EQPT	6.7	2.0	36.1	9.2	-169

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY - NEW HAMPSHIRE

Effective January 1, 1987

Rate Category Description		Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($)
	A	B	C	D	E	F
212	BLDGS - BUILDINGS	26.0	9.0	24.6	2.6	274
221	COE - STEP-BY-STEP	3.1	-6.0	54.7	16.5	0
221	COE - CROSSBAR	1.6	-3.0	69.3	21.1	0
221	COE - CIRCUIT - OTHER	7.5	-2.0	31.2	9.4	3685
221	COE - CIRCUIT - DDS	6.1	-4.0	32.8	11.7	-4
221	COE - RADIO	7.9	-2.0	44.0	7.3	-30
221	COE - ELECTRONIC	10.8	3.0	21.6	7.0	718
231	STA APP - TELETYPEWRITER	3.7	10.0	90.0	0.0	0
231	STA APP - TELE & MISC	8.0	1.0	0.2	12.4	-72
234	LARGE PBX - OTHER	4.6	-5.0	55.0	10.9	0
234	LARGE PBX - DDS	5.2	2.0	29.9	13.1	-7
235	PUBLIC TELEPHONE	5.1	1.0	42.1	11.2	301
241	POLE LINES	21.0	-43.0	30.7	5.3	121
242	AERIAL CABLE - EXCHANGE	15.7	-23.0	31.8	5.8	3385
242	AERIAL CABLE - TOLL	13.7	-8.0	34.0	5.4	592
242	UNDERGROUND CABLE - EXCH	17.8	-18.0	22.5	5.4	1118
242	UNDERGROUND CABLE - TOLL	15.2	-13.0	24.9	5.8	277
242	BURIED CABLE - EXCHANGE	13.2	-4.0	35.4	5.2	770
242	BURIED CABLE - TOLL	11.6	-5.0	61.9	3.7	99
242	SUBMARINE CABLE - EXCH	17.8	-10.0	37.5	4.1	-11
242	SUBMARINE CABLE - TOLL	23.0	-5.0	30.3	3.2	-3
243	AERIAL WIRE	6.1	-54.0	70.7	13.7	-243
244	UNDERGROUND CONDUIT	45.0	-5.0	15.8	2.0	478
261	F&OE - FURN & OFF EQPT	12.6	7.0	24.3	5.5	28
261	F&OE - COMPUTERS & AMA	2.5	5.0	57.6	15.0	0
262	OTHER COMM EQUIPMENT	5.4	9.0	30.6	11.2	125
264	V&WE - MOTOR VEHICLES	2.0	11.0	74.9	7.1	0
264	V&WE - OTHER WORK EQPT	7.0	13.0	28.4	8.4	-40

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

\# Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY - RHODE ISLAND

Effective January 1, 1987

	Rate Category Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($)
	A	B	C	D	E	F
212	BLDGS - BUILDINGS	25.0	11.0	30.7	2.3	206
221	COE - STEP-BY-STEP	2.1	-4.0	71.7	15.4	0
221	COE - CROSSBAR	2.6	-3.0	44.8	22.4	0
221	COE - CIRCUIT - OTHER	7.1	0.0	29.0	10.0	1183
221	COE - CIRCUIT - DDS	5.0	-2.0	40.6	12.3	0
221	COE - RADIO	10.3	-9.0	47.8	5.9	-67
221	COE - ELECTRONIC	10.9	3.0	24.8	6.6	1832
231	STA APP - TELETYPEWRITER	6.3	11.0	-170.9	41.3	-7
231	STA APP - TELE & MISC	8.9	1.0	-9.8	12.2	-60
234	LARGE PBX - OTHER	5.6	-6.0	31.1	13.4	51
234	LARGE PBX - DDS	4.2	2.0	40.1	13.8	0
235	PUBLIC TELEPHONE	5.7	1.0	42.6	9.9	428
241	POLE LINES	24.0	-85.0	55.3	5.4	618
242	AERIAL CABLE - EXCHANGE	17.3	-32.0	42.0	5.2	2282
242	AERIAL CABLE - TOLL	15.4	-10.0	32.3	5.0	-58
242	UNDERGROUND CABLE - EXCH	18.5	-30.0	47.7	4.4	2157
242	UNDERGROUND CABLE - TOLL	15.0	-5.0	37.2	4.5	-7
242	BURIED CABLE - EXCHANGE	15.9	-5.0	40.8	4.0	105
242	BURIED CABLE - TOLL	12.1	-2.0	59.4	3.5	0
242	SUBMARINE CABLE - EXCH	15.1	-5.0	52.2	3.5	3
242	SUBMARINE CABLE - TOLL	24.0	-5.0	28.6	3.2	-26
243	AERIAL WIRE	6.9	-39.0	70.0	10.0	-48
244	UNDERGROUND CONDUIT	39.0	-5.0	30.5	1.9	358
261	F&OE - FURN & OFF EQPT	16.0	12.0	18.9	4.3	-39
261	F&OE - COMPUTERS & AMA	2.2	5.0	58.8	16.5	0
262	OTHER COMM EQUIPMENT	6.4	10.0	26.0	10.0	130
264	V&OWE - MOTOR VEHICLES	2.4	12.0	67.7	8.5	0
264	V&OWE - OTHER WORK EQPT	7.1	5.0	29.5	9.2	4

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY - VERMONT

Effective January 1, 1987

	Rate Category Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	%	($)
	A	B	C	D	E	F
212	BLDGS - BUILDINGS	21.0	9.0	34.2	2.7	309
221	COE - STEP-BY-STEP	2.9	-6.0	74.0	11.0	●
221	COE - CROSSBAR	2.0	-3.0	56.3	23.4	●
221	COE - CIRCUIT - OTHER	7.3	2.0	31.1	9.2	1594
221	COE - CIRCUIT - DDS	7.3	-4.0	18.7	11.7	-3
221	COE - RADIO	7.7	-7.0	49.0	7.5	-64
221	COE - ELECTRONIC	9.8	1.0	27.7	7.3	1013
231	STA APP - TELETYPEWRITER	6.1	11.0	-246.5	55.0	-3
231	STA APP - TELE & MISC	9.7	1.0	1.0	10.1	-20
234	LARGE PBX - OTHER	4.6	-7.0	63.8	9.4	0
234	LARGE PBX - DDS	4.2	2.0	43.4	13.0	0
235	PUBLIC TELEPHONE	5.1	1.0	44.4	10.7	153
241	POLE LINES	18.9	-66.0	42.4	6.5	849
242	AERIAL CABLE - EXCHANGE	16.0	-23.0	38.8	5.3	2919
242	AERIAL CABLE - TOLL	13.8	-12.0	44.4	4.9	475
242	UNDERGROUND CABLE - EXCH	17.9	-25.0	31.8	5.2	327
242	UNDERGROUND CABLE - TOLL	15.2	-44.0	28.8	7.6	56
242	BURIED CABLE - EXCHANGE	17.5	-6.0	28.7	4.4	173
242	BURIED CABLE - TOLL	12.7	-5.0	49.4	4.4	115
242	SUBMARINE CABLE - EXCH	12.8	-10.0	62.3	3.7	-1
242	SUBMARINE CABLE - TOLL	9.8	-10.0	80.9	3.0	-3
243	AERIAL WIRE	5.4	-50.0	89.7	11.2	●
244	UNDERGROUND CONDUIT	46.0	-5.0	13.9	2.0	224
261	F&OE - FURN & OFF EQPT	12.1	9.0	20.0	5.9	3
261	F&OE - COMPUTERS & AMA	2.6	5.0	47.3	18.3	0
262	OTHER COMM EQUIPMENT	6.6	9.0	23.5	10.2	113
264	V&OWE - MOTOR VEHICLES	1.8	7.0	81.4	6.4	0
264	V&OWE - OTHER WORK EQPT	9.2	0.0	29.0	7.7	-19

● Amortizations ordered in FCC 84-620, released December 19, 1984, are continued.

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
OHIO BELL TELEPHONE COMPANY

Effective January 1, 1987

Rate Category Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
	(years)	(%)	(%)	(%)	($)
A	B	C	D	E	F
212 BUILDINGS	27.0	8.0	19.5	2.7	1292
221 COE - STEP-BY-STEP	1.1	-9.0	75.6	30.4	0
221 COE - CROSSBAR	1.9	-6.0	35.2	37.3	0
221 COE - CIRCUIT - OTHER	7.7	1.0	31.1	8.8	5504
221 COE - CIRCUIT - DDS	8.1	3.0	20.0	9.5	25
221 COE - RADIO	9.2	-1.0	27.6	8.0	-358
221 COE - ELECTRONIC ANALOG	10.8	3.0	31.6	6.1	11901
221 COE - ELECTRONIC DIGITAL	12.2	3.0	8.7	7.2	569
231 STATION APPARATUS	6.2	-1.0	18.3	13.3	-497
234 LARGE PBX	3.1	1.0	48.8	16.2	0
235 PUBLIC TELEPHONE	6.2	-1.0	39.0	10.0	13
241 POLE LINES	19.7	-75.0	50.7	6.3	-185
242 AERIAL CABLE	12.8	-13.0	42.2	5.5	8471
242 UNDERGROUND CABLE	21.0	-16.0	32.7	4.0	10450
242 BURIED CABLE	17.5	-9.0	26.1	4.7	2367
242 SUBMARINE CABLE	8.4	-17.0	84.0	3.9	-11
243 AERIAL WIRE	3.5	-71.0	130.9	11.5	0
244 UNDERGROUND CONDUIT	42.0	-18.0	26.2	2.2*	6320
261 F&OE - FURNITURE	21.0	-3.0	13.8	4.2	956
261 F&OE - COMPUTERS	4.2	6.0	42.3	12.3	0
262 OTHER COMM EQUIPMENT	6.0	0.0	27.4	12.1	-578
264 MOTOR VEHICLES	4.4	19.0	37.8	9.8	0
264 TOOLS	7.5	6.0	28.2	8.8	-742

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
PACIFIC NORTHWEST BELL TELEPHONE COMPANY - IDAHO

Effective January 1, 1987

	Rate Category Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($)
	A	B	C	D	E	F
212	BUILDINGS	29.0	5.0	25.4	2.4	46
221	COE STEP-BY-STEP	1.5	-2.0	67.1	23.3	0
221	COE CROSSBAR	1.5	-3.0	73.3	19.8	0
221	COE CIRCUIT-OTHER	9.3	-10.0	33.7	8.2	-23
221	COE RADIO	9.6	-12.0	37.0	7.8	2
221	COE ELECTRONIC	15.7	-5.0	30.8	4.7	67
234	LARGE PBX	-	-	48.6	30.1	0
235	PUBLIC TEL. EQUIP.	-	-	62.4	14.4	0
241	POLES	7.2	-28.0	66.8	8.5	38
242	AERIAL CABLE	17.8	-19.0	39.6	4.5	15
242	UNDERGROUND CABLE	30.0	-7.0	24.7	2.7	30
242	BURIED CABLE	24.0	-8.0	24.4	3.5	10
242	SUBMARINE CABLE	18.1	-5.0	41.6	3.5	-1
243	AERIAL WIRE	11.6	-47.0	35.7	9.6	-5
244	UNDERGROUND CONDUIT	50.0	-15.0	22.3	1.9	6
261	FURN. AND OFFICE EQUIP.	8.2	5.0	48.6	5.7	5
262	OTHER COMM. EQUIP.	-	-	32.0	14.2	0
264	VEH. & O.W.E.	6.1	20.0	28.5	8.4	-34

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
PACIFIC NORTHWEST BELL TELEPHONE COMPANY - OREGON

Effective January 1, 1987#

Rate Category	Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate
		(years)	(%)	(%)	(%)
	A	B	C	D	E
212	BUILDINGS	29.0	1.0	21.9	2.7
221	COE - STEP-BY-STEP	-	-2.0	80.7	●
221	COE - CROSSBAR	-	-3.0	88.5	●
221	COE - CIRCUIT	8.2	5.0	30.5	7.9
221	COE - CIRCUIT DDS	7.6	20.0	42.3	5.0
221	COE - RADIO	9.7	-5.0	34.1	7.3
221	COE - ELECTRONIC ANALOG	9.4	2.0	28.5	7.4
221	COE - ELECTRONIC DIGITAL	13.8	5.0	7.6	6.3
231	STA APP - TELETYPEWRITER	4.4	-4.0	38.2	15.0
231	STA APP - TELE & MISC	6.1	6.0	15.4	12.9
234	LARGE PBX - OTHER	5.4	14.0	77.7	1.5
235	PUBLIC TELEPHONE	6.1	6.0	75.0	3.1
241	POLE LINES	17.4	-48.0	41.4	6.1
242	AERIAL CABLE-TOTAL	16.6	-20.0	32.4	5.3
242	UNDERGROUND CABLE-TOTAL	24.0	-14.0	26.1	3.7
242	BURIED CABLE-TOTAL	24.0	-14.0	26.6	3.6
242	SUBMARINE CABLE	10.9	-4.0	58.3	4.2
243	AERIAL WIRE	6.2	-41.0	72.6	11.0
244	UNDERGROUND CONDUIT	43.0	-15.0	20.7	2.2
261	F&OE - FURNITURE	9.7	9.0	26.8	6.6
261	F&OE - COMPUTERS	2.8	9.0	47.6	15.5
262	OTHER COMM EQUIPMENT	4.7	0.0	76.5	5.0
264	VEHICLES & O.W.E.	5.5	13.0	38.1	8.9

● Amortization of monthly net book over a two year period.

* For accounts with reserve imbalance amortizations, Column (D) contains the book reserve adjusted to recognize the previously ordered amortization.

Amortizations ordered in FCC 85-656, released December 31, 1985, are continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
PACIFIC NORTHWEST BELL TELEPHONE COMPANY - WASHINGTON

Effective January 1, 1987

Rate Category	Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($)
	A	B	C	D	E	F
212	BUILDINGS	32.0	4.0	14.8	2.5	-747
212	COE-MANUAL	-	-	-	-	+
221	COE - STEP-BY-STEP	-	-	49.5	-	●
221	COE - CROSSBAR	-	-	-54.3	-	●
221	COE - CIRCUIT	8.9	5.0	27.0	7.6	4452
221	COE - CIRCUIT DDS	6.4	10.0	23.8	10.3	-156
221	COE - RADIO	9.1	-5.0	26.1	8.7	-118
221	COE - ELECTRONIC ANALOG	10.7	2.0	31.1	6.3	9438
221	COE - ELECTRONIC DIGITAL	15.2	5.0	6.4	5.8	-80
231	STA APP - TELETYPEWRITER	5.0	0.0	30.4	13.9	0
231	STA APP - TELE & MISC	6.6	1.0	41.7	8.7	3
234	LARGE PBX - OTHER	5.8	-2.0	21.0	14.0	-1307
235	PUBLIC TELEPHONE	6.6	1.0	36.2	9.5	-516
241	POLE LINES	17.8	-67.0	55.0	6.3	1415
242	AERIAL CABLE-TOTAL	16.8	-20.0	38.1	4.9	1803
242	UNDERGROUND CABLE-TOTAL	25.0	-20.0	29.8	3.6	5435
242	BURIED CABLE-TOTAL	24.0	-12.0	28.0	3.5	618
242	SUBMARINE CABLE	14.1	5.0	45.1	3.5	-153
243	AERIAL WIRE	4.3	-77.0	87.9	20.7	0
244	UNDERGROUND CONDUIT	44.0	-10.0	19.6	2.1	1046
261	F&OE - FURNITURE	11.8	6.0	27.2	5.7	-397
261	F&OE - COMPUTERS	3.0	10.0	50.0	13.3	0
262	OTHER COMM EQUIPMENT	5.3	-1.0	35.7	12.3	-1065
264	VEHICLES& OWE-TOTAL	4.8	16.0	39.2	9.3	0

● Amortization of monthly net book over a two year period.

+ Amortization ordered in FCC 85-656, released December 31, 1985, is continued.

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
SOUTH CENTRAL BELL TELEPHONE COMPANY - ALABAMA

Effective January 1, 1987

Rate Category	Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years) B	(%) C	(%) D	(%) E	($) F
212	BLDGS - BUILDING	35.0	4.0	17.9	2.2	151
221	COE - STEP-BY-S...	1.6	-7.0	35.2	44.9	0
221	COE - CROSSBAR	1.2	-3.0	29.7	61.1	0
221	COE - CIRCUIT	7.0	2.0	29.5	9.8	5489
221	COE - CIRCUIT D...	4.3	10.0	19.2	16.5	0
221	COE - RADIO	9.9	-4.0	22.9	8.2	-22
221	COE - ELECTRONIC ANALOG	10.2	0.0	29.6	6.9	6730
221	COE - ELECTRONIC DIGITAL	12.8	2.0	7.8	7.0	-260
231	STA APP - TELETYPEWRITER	7.0	2.0	36.0	8.9	0
233	STA APP - TOLL & MISC	7.0	2.0	14.9	11.9	0
234	LARGE PBX - OTHER	3.5	-4.0	55.1	14.0	0
234	LARGE PBX - DP	5.5	2.0	33.8	6.2	0
235	PUBLIC TELEPHONE	3.9	20.0	34.0	11.8	0
241	POLE LINES	19.5	-44.0	31.9	5.7	-110
242	A. C. - EXCH - METALLIC	14.7	-6.0	32.5	5.0	409
242	A. C. - EXCH - FIBER	19.7	-20.0	7.4	5.7	-4
242	A. C. - TOLL - METALLIC	8.2	-20.0	54.4	8.0	254
242	A. C. - TOLL - FIBER	16.8	-20.0	7.4	6.7	-3
242	U. C. - EXCH - METALLIC	18.7	-14.0	35.0	4.2	4976
242	U. C. - EXCH - FIBER	19.2	-20.0	10.3	5.7	30
242	U. C. - TOLL - METALLIC	9.6	-15.0	47.0	7.1	200
242	U. C. - TOLL - FIBER	15.0	-20.0	10.9	7.3	23
242	B. C. - EXCH - METALLIC	16.5	-7.0	30.2	4.7	5515
242	B. C. - EXCH - FIBER	21.0	-11.0	5.0	5.0	-2
242	B. C. - TOLL - METALLIC	10.7	-3.0	44.1	5.5	401
242	B. C. - TOLL - FIBER	12.5	-11.0	9.7	8.1	-6
242	SUBMARINE CABLE	16.9	-1.0	36.0	3.8	-15
243	AERIAL WIRE	9.5	-61.0	52.9	11.4	-110
244	UNDERGROUND CONDUIT	52.0	-5.0	18.3	1.7	243
261	F&OE - FURNITURE	13.7	13.0	14.3	5.3	-88
261	F&OE - COMPUTER	4.0	7.0	36.3	14.1	0
262	OTHER COMM EQUIPMENT	4.4	30.0	2.4	15.4	0
264	V&OWE - MOTOR VEHICLES	3.2	20.0	40.4	12.4	0
264	V&OWE - OTHER WORK EQPT	7.8	19.0	36.1	5.8	235

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
SOUTH CENTRAL BELL TELEPHONE COMPANY - KENTUCKY

Effective January 1, 1987

Rate Category Description		Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($)
	A	B	C	D	E	F
212	BLDGS - BUILDINGS	28.0	3.0	21.6	2.7	798
221	COE - STEP-BY-STEP	1.9	-4.0	58.8	23.8	0
221	COE - CROSSBAR	1.7	-3.0	50.4	30.9	0
221	COE - CIRCUIT	7.1	4.0	29.4	9.4	-411
221	COE - CIRCUIT DDS	4.2	10.0	14.8	17.9	0
221	COE - RADIO	9.9	-9.0	28.0	8.2	-127
221	COE - ELECTRONIC ANALOG	10.3	6.0	31.1	6.1	5418
221	COE - ELECTRONIC DIGITAL	12.7	3.0	7.7	7.0	53
231	STA APP - TELETYPEWRITER	-	-	100.0	-	0
231	STA APP - TELE & MISC	7.1	4.0	69.0	3.8	0
234	LARGE PBX - OTHER	3.0	-4.0	61.2	14.3	0
234	LARGE PBX - DDS	5.5	2.0	36.4	11.2	0
235	PUBLIC TELEPHONE	3.5	20.0	51.0	8.3	0
241	POLE LINES	18.9	-61.0	34.5	6.7	-42
242	A. C. - EXCH - METALLIC	14.7	-10.0	33.7	5.2	823
242	A. C. - EXCH - FIBER	19.7	-13.0	7.0	5.4	-11
242	A. C. - TOLL - METALLIC	7.4	25.0	40.1	4.7	136
242	A. C. - TOLL - FIBER	20.0	-13.0	5.4	5.4	-7
242	U. C. - EXCH - METALLIC	18.8	-20.0	36.4	4.4	3197
242	U. C. - EXCH - FIBER	19.1	-7.0	4.8	5.4	-34
242	U. C. - TOLL - METALLIC	9.6	-3.0	40.0	6.6	147
242	U. C. - TOLL - FIBER	14.8	-7.0	5.5	6.9	-5
242	B. C. - EXCH - METALLIC	15.9	-15.0	32.6	5.2	5408
242	B. C. - EXCH - FIBER	21.0	-6.0	4.8	4.8	-2
242	B. C. - TOLL - METALLIC	11.7	-1.0	44.7	4.8	263
242	B. C. - TOLL - FIBER	15.9	-3.0	3.1	6.3	-1
242	SUBMARINE CABLE	18.5	0.0	26.0	4.0	-1
243	AERIAL WIRE	12.5	-67.0	49.5	9.4	-264
244	UNDERGROUND CONDUIT	52.0	-5.0	16.9	1.7	69
261	F&OE - FURNITURE	9.7	10.0	24.6	6.7	62
261	F&OE - COMPUTERS	4.4	5.0	40.6	12.4	0
262	OTHER COMM EQUIPMENT	5.2	30.0	18.0	10.0	-437
264	V&OWE - MOTOR VEHICLES	3.4	19.0	38.1	12.6	0
264	V&OWE - OTHER WORK EQPT	11.7	3.0	22.5	6.4	15

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
SOUTH CENTRAL BELL TELEPHONE COMPANY - LOUISIANA

Effective January 1, 1987

Rate Category	Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
	A	(years) B	(%) C	(%) D	(%) E	($) F
212	BLDGS - BUILDINGS	26.0	5.0	20.9	2.9	1006
221	COE - MANUAL	1.5	-8.0	81.6	17.6	0
221	COE - STEP-BY-STEP	2.3	-8.0	42.4	28.5	0
221	COE - CROSSBAR	1.0	-3.0	86.1	16.9	0
221	COE - CIRCUIT	7.0	4.0	32.1	9.1	-217
221	COE - CIRCUIT DDS	4.5	10.0	37.7	11.6	0
221	COE - RADIO	8.8	-5.0	33.4	8.1	190
221	COE - ELECTRONIC ANALOG	9.2	1.0	34.3	7.0	13402
221	COE - ELECTRONIC DIGITAL	14.0	1.0	7.2	6.6	-327
231	STA APP - TELETYPEWRITER	7.0	4.0	46.5	7.1	0
231	STA APP - TELE & MISC	7.0	4.0	7.0	12.7	0
234	LARGE PBX - ELECTRONIC	8.5	1.0	61.4	4.4	0
234	LARGE PBX - OTHER	3.6	-4.0	70.4	9.3	0
234	LARGE PBX - DDS	5.5	2.0	41.1	10.3	0
235	PUBLIC TELEPHONE	3.4	20.0	36.5	12.8	0
241	POLE LINES	19.3	-65.0	34.9	6.7	-91
242	A. C. - EXCH - METALLIC	10.5	-4.0	28.9	7.2	936
242	A. C. - EXCH - FIBER	19.7	-20.0	7.4	5.7	-3
242	A. C. - TOLL - METALLIC	8.4	7.0	38.9	6.4	72
242	A. C. - TOLL - FIBER	16.9	-20.0	5.4	6.8	6
242	U. C. - EXCH - METALLIC	19.0	-3.0	27.0	4.0	4614
242	U. C. - EXCH - FIBER	19.2	-20.0	10.3	5.7	42
242	U. C. - TOLL - METALLIC	9.4	-2.0	42.1	6.4	248
242	U. C. - TOLL - FIBER	12.5	-20.0	14.4	8.4	67
242	B. C. - EXCH - METALLIC	12.6	-14.0	35.5	6.2	24624
242	B. C. - EXCH - FIBER	19.2	-10.0	4.4	5.5	-7
242	B. C. - TOLL - METALLIC	11.0	0.0	41.5	5.3	821
242	B. C. - TOLL - FIBER	12.9	-10.0	6.4	8.0	6
242	SUBMARINE CABLE	12.2	20.0	33.5	3.8	-183
243	AERIAL WIRE	10.1	-7.0	-21.7	12.7	-369
244	UNDERGROUND CONDUIT	52.0	-5.0	14.0	1.8	-3
261	F&OE - FURNITURE	7.8	3.0	35.5	7.9	503
261	F&OE - COMPUTERS	3.6	4.0	52.4	12.1	0
262	OTHER COMM EQUIPMENT	4.8	30.0	23.2	9.8	0
264	V&OWE - MOTOR VEHICLES	3.7	12.0	40.2	12.9	0
264	V&OWE - OTHER WORK EQPT	15.3	2.0	7.2	5.9	-685

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
SOUTH CENTRAL BELL TELEPHONE COMPANY - MISSISSIPPI

Effective January 1, 1987

Rate Category	Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($)
	A	B	C	D	E	F
212	BLDGS - BUILDINGS	32.0	2.0	18.4	2.5	221
221	COE - STEP-BY-STEP	2.1	-8.0	50.2	27.5	0
221	COE - CROSSBAR	1.9	-3.0	26.9	40.1	0
221	COE - CIRCUIT	6.8	2.0	32.1	9.7	3009
22.	COE - CIRCUIT DDS	4.3	-4.0	11.9	21.4	0
221	COE - RADIO	8.4	-7.0	32.1	8.9	100
221	COE - ELECTRONIC ANALOG	10.1	0.0	30.6	6.9	2667
221	COE - ELECTRONIC DIGITAL	12.9	3.0	11.3	6.6	213
231	STA APP - TELETYPEWRITER	6.8	2.0	-224.6	47.4	0
231	STA APP - TELE & MISC	6.8	2.0	26.1	10.6	0
234	LARGE PBX - OTHER	3.5	-4.0	50.9	15.2	0
234	LARGE PBX - DDS	5.5	2.0	2.9	17.3	0
235	PUBLIC TELEPHONE	3.4	20.0	40.2	11.7	0
241	POLE LINES	19.3	-44.0	22.9	6.3	-1797
242	A. C. - EXCH - METALLIC	11.8	-11.0	37.5	6.2	2813
242	A. C. - EXCH - FIBER	15.7	-29.0	7.9	7.7	0
242	A. C. - TOLL - METALLIC	8.7	-3.0	41.0	7.1	349
242	A. C. - TOLL - FIBER	16.7	-10.0	8.5	6.1	1
242	U. C. - EXCH - METALLIC	18.8	-15.0	34.9	4.3	2284
242	U. C. - EXCH - FIBER	15.9	-13.0	6.7	6.7	1
242	U. C. - TOLL - METALLIC	8.9	2.0	42.9	6.2	128
242	U. C. - TOLL - FIBER	12.3	-13.0	6.1	8.7	17
242	B. C. - EXCH - METALLIC	13.1	-8.0	34.7	5.6	7534
242	B. C. - EXCH - FIBER	17.1	-11.0	5.6	6.2	0
242	B. C. - TOLL - METALLIC	10.1	-4.0	47.5	5.6	467
242	B. C. - TOLL - FIBER	12.9	-5.0	6.1	7.7	8
242	SUBMARINE CABLE	10.7	-1.0	24.4	7.2	34
243	AERIAL WIRE	9.7	-58.0	46.9	11.5	-717
244	UNDERGROUND CONDUIT	52.0	-5.0	15.5	1.7	-272
261	F&OE - FURNITURE	9.6	6.0	23.8	7.3	106
261	F&OE - COMPUTERS	3.7	1.0	39.3	16.1	0
262	OTHER COMM EQUIPMENT	4.6	30.0	22.8	10.3	0
264	V&OWE - MOTOR VEHICLES	3.3	15.0	45.3	12.0	0
264	V&OWE - OTHER WORK EQPT	10.3	3.0	28.3	6.7	46

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
SOUTH CENTRAL BELL TELEPHONE COMPANY - TENNESSE

Effective January 1, 1987

	Rate Category Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($)
	A	B	C	D	E	F
212	BLDGS - BUILDINGS	31.0	1.0	21.5	2.5	-44
221	COE - STEP-BY-STEP	2.2	-8.0	54.7	24.2	0
221	COE - CROSSBAR	1.4	-3.0	55.5	33.9	0
221	COE - CIRCUIT	6.8	4.0	30.1	9.7	2988
221	COE - CIRCUIT DDS	4.4	10.0	32.4	13.1	0
221	COE - RADIO	12.8	-3.0	20.8	6.4	-564
221	COE - ELECTRONIC ANALOG	9.1	0.0	36.8	6.9	11575
221	COE - ELECTRONIC DIGITAL	14.1	5.0	7.5	6.2	186
231	STA APP - TELETYPEWRITER	6.8	4.0	30.1	9.7	366
231	STA APP - TELE & MISC	6.8	4.0	89.2	1.0	0
234	LARGE PBX - OTHER	3.0	-4.0	80.5	7.8	0
234	LARGE PBX - DDS	5.5	2.0	16.5	14.8	0
235	PUBLIC TELEPHONE	3.1	30.0	34.1	11.6	0
241	POLE LINES	23.0	-40.0	24.1	5.0	-3210
242	A. C. - EXCH - METALLIC	13.4	-6.0	39.6	5.0	6446
242	A. C. - EXCH - FIBER	17.7	-20.0	4.6	6.5	-4
242	A. C. - TOLL - METALLIC	7.4	-20.0	69.6	6.8	578
242	A. C. - TOLL - FIBER	20.0	-20.0	5.7	5.7	-3
242	U. C. - EXCH - METALLIC	18.5	3.0	30.5	3.6	4519
242	U. C. - EXCH - FIBER	19.0	-20.0	6.0	6.0	2
242	U. C. - TOLL - METALLIC	9.8	-3.0	45.2	5.9	293
242	U. C. - TOLL - FIBER	14.8	-20.0	7.6	7.6	3
242	B. C. - EXCH - METALLIC	14.9	-6.0	34.9	4.8	11583
242	B. C. - EXCH - FIBER	19.7	-13.0	1.7	5.6	-2
242	B. C. - TOLL - METALLIC	12.0	-2.0	43.7	4.9	973
242	B. C. - TOLL - FIBER	15.1	-9.0	8.6	6.6	-28
242	SUBMARINE CABLE	17.1	-1.0	31.9	4.0	-10
243	AERIAL WIRE	13.4	-50.0	27.6	9.1	-1851
244	UNDERGROUND CONDUIT	52.0	-5.0	18.3	1.7	-119
261	F&OE - FURNITURE	12.2	5.0	21.6	6.0	70
261	F&OE - COMPUTERS	3.9	5.0	43.2	13.3	0
262	OTHER COMM EQUIPMENT	4.9	30.0	25.0	9.2	0
264	V&OWE - MOTOR VEHICLES	3.7	21.0	39.0	10.8	0
264	V&OWE - OTHER WORK EQPT	10.9	7.0	17.3	6.9	-216

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
SOUTHERN NEW ENGLAND TELEPHONE COMPANY - CONNECTICUT

Effective January 1, 1987

Rate Category Description		Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($)
	A	B	C	D	E	F
212	BUILDINGS	27.0	-5.0	26.9	2.9	-588
221	COE - MANUAL	4.4	-10.0	110.0	0.0	0
221	COE - STEP-BY-STEP	2.6	-9.0	80.9	10.8	0
221	COE - CROSSBAR	2.6	-9.0	73.2	13.8	0
221	COE - CIRCUIT	8.5	0.0	38.1	7.3	3443
221	COE - CIRCUIT DDS	4.9	2.0	38.7	12.1	0
221	COE - RADIO	8.8	-2.0	46.0	6.4	-24
221	COE - ELECTRONIC ANALOG	10.2	0.0	39.0	6.0	10669
221	COE - ELECTRONIC DIGITAL	12.8	2.0	10.3	6.9	160
231	STA APP - TELE & MISC	7.3	0.0	36.0	8.8	-427
234	LARGE PBX - OTHER	4.1	-3.0	59.3	10.7	0
234	LARGE PBX - DDS	6.3	-5.0	44.7	22.9	0
235	PUBLIC TELEPHONE	6.0	1.0	44.6	9.1	62
241	POLE LINES	21.0	-60.0	46.3	5.4	-1066
242	AERIAL CABLE	16.7	-19.0	37.6	4.9	3144
242	UNDERGROUND CABLE	18.3	-14.0	38.1	4.1	4243
242	BURIED CABLE	19.2	-9.0	28.5	4.2	1103
242	SUBMARINE CABLE	18.5	0.0	51.8	2.6	7
244	UNDERGROUND CONDUIT	39.0	-27.0	31.8	2.4	2424
261	F&OE - STOREROOM & OTHER	8.6	3.0	27.5	8.1	1096
261	F&OE - COMPUTERS	2.9	5.0	60.5	11.9	0
262	OTHER COMM EQUIPMENT	5.0	3.0	59.9	7.4	0
264	V&OWE - MOTOR VEHICLES	4.1	12.0	46.5	10.1	0
264	V&OWE - GA & MV SHOP EQUIP	13.3	3.0	30.8	5.0	10
264	V&OWE - TOOLS & OWE	5.7	1.0	40.8	10.2	431

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter

The Prescription of Revised
Percentages of Depreciation
Pursuant to the Communications
Act of 1934, as Amended, for:

General Telephone Company of Florida, General Telephone Company of Indiana, General Telephone Company of the Southwest, Michigan Bell Telephone Company, New York Telephone Company, Northwestern Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, Wisconsin Bell, Inc., AT&T Communications - Interstate Division, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company of Virginia, Citizens Utilities Company of California, Continental Telephone Company of California, The Diamond State Telephone Company, General Telephone Company of the Northwest, General Telephone Company of Ohio, Illinois Bell Telephone Company, Mountain States Telephone and Telegraph Company, Nevada Bell, Pacific Bell

ERRATUM

Released: February 19, 1988

The *Memorandum Opinion and Order* released on January 22, 1988 (FCC 88-7) contained an error in the text, and errors and incorrect data in Appendix B. The text is corrected as follows:

1. The following sentence is added to Footnote 42:

"Certain carriers granted amortizations in the *1986 Orders* also filed depreciation rate studies in 1987. The revised amortization amounts for those carriers are contained in appendices to the 1987 depreciation orders".

2. The FCC Order referenced in the footnote on page 1 of Appendix B is changed to FCC 87-32.

3. The FCC Order referenced in the footnote on page 4 of Appendix B is changed to FCC 86-603.

4. Certain data on pages 5, 7, 9, 10, and 11 are incorrect. Corrected pages are attached hereto.

FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation and Amortization for
GENERAL TELEPHONE COMPANY OF THE SOUTH - SOUTH CAROLINA

Effective January 1, 1987#

	Rate Category Description	Annual Amort. Expense ($000)
212	BUILDINGS	34
221	COE - MANUAL SW - DIG	-137
221	COE - DIGITAL SW / AMRE	85
221	COE - CIRCUIT	478
221	COE - RADIO	-10
241	POLE LINES	24
242	AERIAL CABLE	244
242	UNDERGROUND CABLE	24
242	BURIED CABLE	462
242	SUBMARINE CABLE	2
243	AERIAL WIRE	83
244	UNDERGROUND CONDUIT	-1
261	F&OE - FURN & FIXTURES	80
264	MOTOR VEHICLES	-70
264	TOOLS & OTHER WORK EQUIPMENT	7

Rates for all accounts remain as prescribed in FCC Order 87-32, released January 29, 1987.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation and Amortization for
GENERAL TELEPHONE COMPANY OF THE SOUTHWEST - OKLAHOMA

Effective January 1, 1987#

Rate Category	Description	Annual Amort. Expense ($000)
212	BUILDINGS	55
221	COE - ELECTRONIC-DIGITAL	112
221	COE - AUTO SWITCHING	202
221	COE - A.M.R.E.	35
221	COE - CIRCUIT	408
221	COE - RADIO	-58
235	PUBLIC TELEPHONE	5
241	POLE LINES	429
241	MICROWAVE & MOBILE TOWERS	-7
242	AERIAL CABLE - COPPER	425
242	UNDERGROUND CABLE - COPPER	51
242	UNDERGROUND CABLE - FIBER	1
242	BURIED CABLE - COPPER	163
242	SUBMARINE CABLE	-2
243	AERIAL WIRE	253
244	UNDERGROUND CONDUIT	7
261	F&OE - OTHER THAN MACHINES	-11
261	F&OE - MACHINES	1
262	OCE - LARGE PBX	-5
262	OCE - APPARATUS	-6
264	V&OWE - PKUPS & LT TRUCKS	-16
264	V&OWE - HEAVY TRUCKS	-16
264	V&OWE - SPEC MOTOR VEHICLES	-19
264	V&OWE - AERIAL CABLE CONST	-2
264	V&OWE - SHOP EQUIPMENT	-1
264	V&OWE - TOOLS & OWE	-14
264	V&OWE - TRAILERS	-1
264	V&OWE - MOBILE TOOLS	10

Rates for all accounts and amortizations for COE-Analog and COE-TSPS remain as prescribed in FCC Order 86-603, released January 22, 1987.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation and Amortization for
SOUTHERN BELL TELEPHONE AND TELEGRAPH CO. - FLORIDA

Effective January 1, 1987#

	Rate Category Description	Annual Amort. Expense ($000)
212	BUILDINGS	-960
221	COE - STEP-BY-STEP	9382
221	COE - CROSSBAR	41640
221	COE - CIRCUIT - OTHER	16782
221	COE - CIRCUIT - DDS	286
221	COE - ELECTRONIC - ANALOG	30178
221	COE - ELECTRONIC - DIGITAL	1245
231	STA APP - TELETYPEWRITER	13
231	STA APP - TELE & MISC	463
234	LARGE PBX - OTHER	-857
234	LARGE PBX - DDS	-85
241	POLE LINES	-26
242	A. C. - EXCH - METALLIC	1877
242	A. C. - EXCH - OPTICAL	-12
242	A. C. - TOLL - METALLIC	49
242	A. C. - TOLL - OPTICAL	-5
242	U. C. - EXCH - METALLIC	6078
242	U. C. - EXCH - OPTICAL	70
242	U. C. - TOLL - METALLIC	244
242	U. C. - TOLL - OPTICAL	-29
242	B. C. - EXCH - METALLIC	34357
242	B. C. - EXCH - OPTICAL	23
242	B. C. - TOLL - METALLIC	806
242	B. C. - TOLL - OPTICAL	-22
242	SUBMARINE CABLE	95
244	UNDERGROUND CONDUIT	4838
261	F&OE - STOREROOM & OTHER	905
262	OTHER COMM EQUIPMENT	414
264	V&OWE - OTHER WORK EQPT	-820

Rates for all accounts remain as prescribed in FCC Order 86-603, released January 22, 1987.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation and Amortization for
SOUTHERN BELL TELEPHONE AND TELEGRAPH CO. - SOUTH CAROLINA

Effective January 1, 1987#

	Rate Category Description	Annual Amort. Expense ($000)
212	BUILDINGS	720
221	COE - CIRCUIT - OTHER	4875
221	COE - CIRCUIT - DDS	5
221	COE - ELECTRONIC - ANALOG	4043
221	COE - ELECTRONIC - DIGITAL	36
231	STA APP - TELETYPEWRITER	-6
231	STA APP - TELE & MISC	4
241	POLE LINES	-1230
242	A. C. - EXCH - METALLIC	2054
242	A. C. - EXCH - OPTICAL	-1
242	A. C. - TOLL - METALLIC	14
242	U. C. - EXCH - METALLIC	2397
242	U. C. - EXCH - OPTICAL	92
242	U. C. - TOLL - METALLIC	242
242	U. C. - TOLL - OPTICAL	-9
242	B. C. - EXCH - METALLIC	6537
242	B. C. - EXCH - OPTICAL	2
242	B. C. - TOLL - METALLIC	358
242	B. C. - TOLL - OPTICAL	-33
242	SUBMARINE CABLE	11
244	UNDERGROUND CONDUIT	115
261	F&OE - STOREROOM & OTHER	122
262	OTHER COMM EQUIPMENT	-195
264	V&OWE - OTHER WORK EQPT	-202

Rates for all accounts remain as prescribed in FCC Order 86-603, released January 22, 1987.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation and Amortization for
SOUTHWESTERN BELL TELEPHONE COMPANY - OKLAHOMA

Effective January 1, 1987#

	Rate Category Description	Annual Amort. Expense ($000)
212	BUILDINGS	698
221	COE - STEP-BY-STEP	-340
221	COE - CROSSBAR	3671
221	COE - CIRCUIT - OTHER	10145
221	COE - CIRCUIT - DDS	-77
221	COE - RADIO	-190
221	COE - ELECTRONIC - ANALOG	4350
221	COE - ELECTRONIC - DIGITAL	624
231	STA APP - TELE & MISC	6
235	PUBLIC TELEPHONE	326
241	POLE LINES	1183
242	AERIAL CABLE - EXCHANGE	4042
242	AERIAL CABLE - TOLL	87
242	UNDERGROUND CABLE - EXCHANGE	2693
242	UNDERGROUND CABLE - TOLL	130
242	BURIED CABLE - EXCHANGE	7711
242	BURIED CABLE - TOLL	321
242	SUBMARINE CABLE	2
243	AERIAL WIRE - EXCHANGE	817
244	UNDERGROUND CONDUIT	1
261	F&OE - FURN & MECHANICAL	-87
264	V&OWE - PASS & DELV CARS	-74
264	V&OWE - TRUCKS	-173
264	V&OWE - OTHER WORK EQPT	162

Rates for all accounts remain as prescribed in FCC Order 86-603, released January 22, 1987.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The Prescription of Revised Percentages of Depreciation pursuant to the Communications Act of 1934, as amended for:

Alascom, Inc.
The Chesapeake and Potomac Telephone Company of Virginia
The Chesapeake and Potomac Telephone Company of West Virginia
Continental Telephone Company of Virginia
General Telephone Company of Ohio
General Telephone Company of the South
Indiana Bell Telephone Company, Incorporated
New England Telephone and Telegraph Company
Ohio Bell Telephone Company
Pacific Northwest Bell Telephone Company
Southern New England Telephone Company
South Central Bell Telephone Company

ERRATUM

Released: February 19, 1988

The *Order* released January 21, 1988 (FCC 88-13) contained errors in the Appendix. The Appendix is corrected as follows:

1. For column F of each page, the heading "**($)**" is changed to "**($000)**".

2. The data in columns D, E and F on page 2 are incorrect, and entries for several accounts were omitted. A revised page 2 is attached hereto.

3. Entries for several accounts were omitted on pages 8 and 13. Revised pages 8 and 13 are attached hereto.

4. The entry in Column D for Account 221 COE-Electromechanical on page 1 is changed from 96.1 to 70.9.

5. The entry in Column F for Account 264 Other Work Equipment on page 4 is changed from -14 to 0.

6. Page 11 is corrected by adding the following note: "NOTE: For the Teletypewriter account, the amortization ordered in FCC Order 87-32 is continued".

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
THE CHESAPEAKE & POTOMAC TELEPHONE COMPANY OF VIRGINIA

Effective January 1, 1987

Rate Category	Description	Average Remaining Life	Future Net Salvage	12/31/86 Reserve*	Remaining Life Rate	Annual Amort. Expense
		(years)	(%)	(%)	(%)	($000)
	A	B	C	D	E	F
212	BUILDINGS	32.0	2.0	19.2	2.5	-197
221	COE - CUSTOMERS' PREMISES	4.9	1.0	65.9	6.8	0
221	COE - STEP-BY-STEP	1.6	-6.0	21.3	52.9	0
221	COE - CROSSBAR	2.4	-6.0	87.6	7.7	0
221	COE - CIRCUIT	7.6	0.0	29.0	9.3	4228
221	COE - CIRCUIT DDS	8.5	-4.0	27.4	9.0	-30
221	COE - RADIO	11.2	-6.0	31.8	6.6	-82
221	COE - ELECTRONIC ANALOG	9.3	2.0	36.0	6.7	9080
221	COE - ELECTRONIC DIGITAL	12.9	4.0	10.0	6.7	553
231	STA APP - TELE & MISC	6.3	1.0	46.4	8.3	-404
234	LARGE PBX - ELECTRONIC	4.9	1.0	65.9	6.8	0
234	LARGE PBX - OTHER	3.0	-6.0	42.6	21.1	0
234	LARGE PBX - DDS	5.0	2.0	70.5	5.5	0
235	PUBLIC TELEPHONE	7.5	1.0	53.9	6.0	714
241	POLE LINES	21.0	-41.0	28.4	5.4	-1253
242	AERIAL CABLE	14.7	-13.0	36.7	5.2	6051
242	UNDERGROUND CABLE	21.0	-23.0	31.5	4.4	6641
242	BURIED CABLE	15.7	-9.0	27.5	5.2	7684
242	SUBMARINE CABLE	12.9	-8.0	51.6	4.4	2
244	UNDERGROUND CONDUIT	43.0	0.0	18.1	1.9	1776
261	F&OE - FURNITURE	12.5	10.0	16.1	5.9	-61
261	F&OE - COMPUTERS	3.7	12.0	42.5	12.3	0
262	OTHER COMM EQUIPMENT	7.1	8.0	34.8	8.1	-168
264	V&OWE - MOTOR VEHICLES	4.5	15.0	38.0	10.4	0
264	V&OWE - OTHER WORK EQPT	12.8	6.0	20.0	5.8	-563

* For accounts in which amortization of reserve imbalances are shown in Column (F), Column (D) contains the theoretical reserve, otherwise Column (D) contains the book reserve.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GENERAL TELEPHONE COMPANY OF THE SOUTH - KENTUCKY

Effective January 1, 1987

Rate Category Description		Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($000)
A		B	C	D	E	F
212	BUILDINGS	26.0	8.0	22.9	2.7	272
221	MANUAL SW EQUIP @	-	-	-	-	167
221	DIGITAL MANUAL SW EQUIP	9.1	-2.0	48.0	5.9	-200
221	AUTO SW EQUIP	5.0	0.0	37.8	12.4	0
221	AUTO MSG REC EQUIP	5.5	0.0	52.2	8.7	-182
221	DIGITAL AUTO SW EQUIP	13.1	0.0	12.7	6.7	539
221	CIRCUIT EQUIP	8.1	3.0	32.7	7.9	1063
221	RADIO EQUIP	10.9	0.0	32.3	6.2	-107
231	TELEPHONE APPARATUS	7.4	3.0	25.9	9.6	-217
231	STA APP - RADIOTELEPHONE @	-	-	-	-	37
235	PUBLIC TELEPHONE EQUIP	6.0	-3.0	23.8	13.2	-96
241	POLE LINES	16.2	-25.0	24.4	6.2	-26
242	AERIAL CABLE	15.8	-25.0	32.5	5.9	2219
242	AERIAL FIBER	24.0	-2.0	4.1	4.1	11
242	UNDERGROUND CABLE	22.0	0.0	26.7	3.3	117
242	UNDERGROUND FIBER	24.0	-2.0	4.1	4.1	6
242	BURIED CABLE	11.8	5.0	22.2	6.2	203
242	SUBMARINE CABLE	14.1	-5.0	10.7	6.7	0
243	AERIAL WIRE	4.5	-45.0	23.6	27.0	0
244	UNDERGROUND CONDUIT	43.0	-1.0	22.0	1.8	18
261	FURNITURE	13.7	10.0	27.9	4.5	34
261	OFFICE MACHINES	7.1	10.0	13.0	10.8	3
261	DATA PROCESSING EQUIP	4.1	7.0	10.5	20.1	0
262	COMPANY OFFICIAL EQUIP	7.0	-3.0	17.2	12.3	-313
264	MOTOR VEHICLES	4.1	12.0	46.2	10.2	0
264	MOTOR VEHICLE SHOP EQUIP	6.2	0.0	35.4	10.4	2
264	TOOLS & OTHER WORK EQPT	10.7	0.0	26.7	6.9	10

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

@ Amortizations remain as prescribed in FCC Order 87-32, released January 29, 1987.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
INDIANA BELL TELEPHONE COMPANY, INCORPORATED

Effective January 1, 1987

Rate Category	Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($000)
	A	B	C	D	E	F
212	BLDGS - BUILDINGS	30.0	5.0	19.2	2.5	1439
221	COE - STEP-BY-STEP	4.1	-3.0	66.8	8.8	0
221	COE - CROSSBAR	3.4	-2.0	77.9	7.1	0
221	COE - CIRCUIT - OTHER	6.3	3.0	31.2	10.4	6010
221	COE - CIRCUIT - DDS	7.8	-4.0	25.2	10.1	-65
221	COE - RADIO	5.6	-9.0	43.4	11.7	0
221	COE - ELECTRONIC ANALOG	9.9	3.0	33.9	6.4	8430
221	COE - ELECTRONIC DIGITAL	12.9	3.0	8.3	6.9	-524
234	LARGE PBX - OTHER	3.6	-3.0	73.4	8.2	0
235	PUBLIC TELEPHONE	2.8	-74.0	60.0	40.7	0
241	POLE LINES	16.4	-77.0	58.6	7.2	247
242	AERIAL CABLE	14.9	-8.0	35.5	4.9	16
242	UNDERGROUND CABLE	17.7	-6.0	31.7	4.2	4857
242	BURIED CABLE	15.8	-9.0	30.7	5.0	2630
242	SUBMARINE CABLE	10.1	-1.0	61.8	3.9	2
243	AERIAL WIRE	6.5	-35.0	47.7	13.4	-358
244	UNDERGROUND CONDUIT	47.0	-24.0	23.5	2.1	1249
261	F&OE - STOREROOM & OTHER	14.4	5.0	24.8	4.9	-35
261	F&OE - COMPUTERS & AMA	3.5	3.0	41.7	15.8	0
262	OTHER COMM EQUIPMENT	5.6	-6.0	43.6	11.1	-287
264	V&OWE - MOTOR VEHICLES	3.6	15.0	40.6	12.3	0
264	V&OWE - OTHER WORK EQPT	7.3	3.0	36.5	8.3	404

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

\# Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

Before the
Federal Communications Commission
Washington, D.C. 20554

In Matter of

The Prescription of Revised Percentages of Depreciation pursuant to the Communications Act of 1934, as amended for:

AT&T Communications - Interstate Division
The C&P Telephone Company of Maryland
Cincinnati Bell, Inc.
Citizens Utilities Company of California
Continental Telephone Company of California
Continental Telephone Company of New York, Inc.
GTE MTO Inc.
General Telephone Company of the Northwest, Inc.
General Telephone Company of the Southwest
Hawaiian Telephone Company
Michigan Bell Telephone Company
The Mountain States Telephone & Telegraph Co.
New Jersey Bell Telephone Company
New York Telephone Company
Northwestern Bell Telephone Company
Pacific Bell
Southwestern Bell Telephone Company
United Inter-Mountain Telephone Company
Wisconsin Bell, Inc.

ERRATUM

Released: February 19, 1988

The *Order* released January 21, 1988 (FCC 88-14) contained errors in the Appendix. The Appendix is corrected as follows:

1. For column F of each page, the heading "**($)**" is changed to "**($000)**".

2. Page 8 is corrected by adding the following note: "NOTE: The net book costs of the Telephone Station Apparatus, Teletypewriter and Large PBX accounts are to be amortized in equal annual amounts by December 31, 1990".

3. Page 9 is corrected by adding the following note: "NOTE: The net book costs of the Telephone Station Apparatus, Teletypewriter and large PBX accounts are to be amortized in equal annual amounts by December 31, 1989".

4. Footnote # on page 16 is changed to read: "Reflects amortization of the January 1, 1987 reserve imbalance over a five-year period".

5. The entry in column D for Account 243 on page 19 is changed from 59.0 to 41.9.

6. The data in columns D, E, and F on page 25 are incorrect. A revised page 25 is attached hereto.

7. Data for two accounts were omitted from page 34. A revised page 34 is attached hereto.

8. The entry in column D for Account 243 on page 37 is changed from 19.2 to 19.1.

FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
NEW YORK TELEPHONE COMPANY

Effective January 1, 1987

	Rate Category Description	Average Remaining Life	Future Net Salvage	12/31/86 Reserve*	Remaining Life Rate	Annual Amort. Expense
		(years)	(%)	(%)	(%)	($000)
	A	B	C	D	E	F
212	BUILDINGS	38.0	-1.0	18.7	2.2	-11625
212	BUILDINGS - FIXTURES	13.3	-4.0	20.3	6.3	149
221	COE - STEP-BY-STEP	2.2	-6.0	61.5	20.2	0
221	COE - CROSSBAR	3.3	-5.0	50.2	16.6	0
221	COE - CIRCUIT	9.1	-7.0	33.8	8.0	45803
221	COE - CIRCUIT DDS	7.9	6.0	19.7	9.4	-71
221	COE - RADIO	9.2	-4.0	28.8	8.2	605
221	COE - ELECTRONIC ANALOG	10.7	5.0	32.1	5.9	40480
221	COE - ELECTRONIC DIGITAL	13.4	5.0	7.8	6.5	3201
231	STA APP - CUSTOMER	4.5	3.0	25.4	15.9	0
234	LARGE PBX - OTHER	3.4	-10.0	79.1	9.1	0
234	LARGE PBX - DDS	3.2	-6.0	65.9	12.5	0
235	PUBLIC TEL COIN & COINLESS	3.2	-11.0	37.3	23.0	0
235	PUBLIC TEL OTHER	3.6	-13.0	40.5	20.1	0
241	POLE LINES	23.0	-83.0	51.1	5.7	3766
242	A. C. - SUBSC'R - BLDG	18.6	-32.0	32.8	5.3	14342
242	A. C. - SUBSC'R - OTHER	16.3	-28.0	43.1	5.2	41611
242	A. C. - TRUNK	17.7	14.0	31.1	3.1	1980
242	U. C. - SUBSCRIBER	22.0	-10.0	32.6	3.5	19758
242	U. C. - TRUNK	21.0	10.0	35.4	2.6	11326
242	B. C. - SUBSCRIBER	18.0	-7.0	32.9	4.1	7644
242	B. C. - TRUNK	18.4	-4.0	35.7	3.7	911
242	SUBMARINE CABLE-SUB & TRK	15.9	-10.0	31.2	5.0	-40
243	AERIAL WIRE	5.3	-29.0	61.0	12.8	150
244	UNDERGROUND CONDUIT - MAIN	49.0	-20.0	25.9	1.9	5654
244	UNDERGROUND CONDUIT - SUBS	41.0	-12.0	22.0	2.2	-551
261	F&OE - FURNITURE	13.3	2.0	20.1	5.9	481
261	F&OE - COMPUTERS	3.5	3.0	36.8	17.2	0
262	OFF COMM EQPT - EXCL PBX	3.3	-2.0	54.4	14.4	0
262	OFFICIAL COMM EQPT - PBX	4.8	2.0	75.5	4.7	0
264	V&OWE - MOTOR VEHICLES	4.0	8.0	51.1	10.2	0
264	V&OWE - OTHER WORK EQPT	6.4	5.0	35.5	9.3	-247

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve, otherwise Column (D) contains the book reserve.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
SOUTHWESTERN BELL TELEPHONE COMPANY - MISSOURI

Effective January 1, 1987

	Rate Category Description	Average Remaining Life	Future Net Salvage	12/31/86 Book Reserve*	Remaining Life Rate	Annual Amort. Expense#
		(years)	(%)	(%)	(%)	($000)
	A	B	C	D	E	F
212	BUILDINGS	31.0	4.0	16.9	2.6	-127
221	COE - STEP-BY-STEP	4.5	-8.0	46.2	13.7	0
221	COE - CROSSBAR	3.9	-1.0	-39.8	36.1	0
221	OPERATOR SYSTEMS	-	-	0.0	21.6	0
221	COE - CIRCUIT	8.3	0.0	30.6	8.4	4933
221	COE - CIRCUIT DDS	5.3	1.0	34.5	12.2	-144
221	COE - RADIO	13.6	-6.0	25.2	5.9	-211
221	COE - ELECTRONIC ANALOG	11.1	3.0	37.8	5.3	10094
221	COE - ELECTRONIC DIGITAL	13.1	2.0	5.6	7.1	-61
231	STA APP - TELETYPEWRITER	0.0	0.0	0.3	0.0	0
231	STA APP - TELE & MISC	5.8	-2.0	13.2	15.3	-35
234	LARGE PBX - OTHER	-	-	102.0	24.9	0
234	LARGE PBX - DDS	1.4	-2.0	86.9	10.8	0
235	PUBLIC TELEPHONE	5.1	0.0	54.3	9.0	769
241	POLE LINES	15.9	-55.0	58.3	6.1	1221
242	A. C. - EXCH	17.5	-23.0	42.9	4.6	4372
242	A. C. - TOLL	9.4	-7.0	68.6	4.1	62
242	U. C. - EXCH	21.0	-19.0	31.3	4.2	3247
242	U. C. - TOLL	13.6	11.0	23.8	4.8	411
242	B. C. - EXCH	16.5	-10.0	27.5	5.0	7852
242	B. C. - TOLL	14.3	-2.0	43.7	4.1	1501
242	SUBMARINE CABLE	12.3	-5.0	43.5	5.0	1
243	AERIAL WIRE - EXCH	6.8	-90.0	118.4	10.5	654
244	UNDERGROUND CONDUIT	50.0	-5.0	22.2	1.7	371
261	FURN & MECHANICAL	11.5	10.0	9.1	7.0	-1053
261	COMPUTER & AMA	4.3	11.0	23.9	15.1	0
262	OTHER COMM EQUIPMENT	3.5	18.0	63.7	5.2	0
264	PASS & DEL CARS	3.6	10.0	48.5	11.5	0
264	TRUCKS	2.2	8.0	73.8	8.3	0
264	OTHER WORK EQPT	8.9	5.0	22.9	8.1	74

* For accounts in which amortization expense figures are shown in Column (F), Column (D) contains the theoretical reserve percentage.

Reflects amortization of the January 1, 1987 reserve imbalances over a five-year period.

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